Supreme Court, U.S.
FILED
JUL 6 - 2005
OFFICE OF THE CLERK

No. 04-1084

In the Supreme Court of the United States

ALBERTO R. GONZALES, ATTORNEY GENERAL, ET AL.,
PETITIONERS

v.

O CENTRO ESPIRITA BENEFICIENTE UNIAO DO VEGETAL, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOINT APPENDIX

(VOLUME 3)

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PETITION FOR A WRIT OF CERTIORARI FILED: FEB. 10, 2005
CERTIORARI GRANTED: APR. 18, 2005

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[Plaintiffs' Exh. 114]

MEMORANDUM

TO: Bobby Iu
Hawaii Field Office

FROM: Julia Croft
Office of Chief Counsel

RE: Religious Use of Marijuana and Peyote

DATE: August 8, 1994

Your office has requested information regarding the Religious Freedom Restoration Act (RFRA) and its impact on the religious use of marijuana and peyote. This memorandum will address the RFRA in particular and the religious use of these Schedule I controlled substances in general.

Legality of the Religious Use of Marijuana and Peyote

A. Background

In 1965, at Congress' request, the Bureau of Narcotics and Dangerous Drugs, DEA's predecessor, granted an exemption to members of the Native American Church (NAC) from the prohibition against peyote. As a result, by federal regulation, members of the NAC are permitted to use peyote as a sacrament in their religious ceremonies.[1] This exemption from the general

---

[1] Section 1307.31 of Title 21 provides:

The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufacturers

prohibition against the use of peyote has been described as an effort to fulfill the "government's unique obligation" to the preservation of and respect for the culture, traditions, and religion of Native Americans. *United States v. Warner*, 595 F. Supp. 595, 600-01 (D.N.D. 1984).

Peyote, a variety of cactus, is used in religious ceremonies as a sacrament by members of the NAC. Members of the church ingest the cactus, gown only along the Rio Grande valley bordering Texas and Mexico, in their ritualistic ceremonies known as "road meetings." Peyote stems, or "buttons," contain mescaline, a Schedule I controlled substance. When ingested, either by eating the buttons or drinking a derivative tea, peyote has a hallucinogenic effect. The ingestion of peyote "causes extraordinary vision marked by bright and kaleidoscopic colors, geometric patterns, or scenes involving humans or animals." *People v. Woody*, 394 P.2d 813, 816-17 (1964).

To members of the NAC, peyote is also an object of worship. Use of peyote for nonreligious purposes is a sacrilege. Peyote is considered a "teacher" because it fosters a feeling of brotherhood. Additionally, members of the church believe that sacramental use of peyote enables them to experience the Deity.

B. Membership of the Native American Church

The Articles of Incorporation of the NAC, established in Oklahoma in 1918, provide:

peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

> Membership in this Corporation shall be limited to persons with at least twenty-five percent Indian blood; provided, that any non-Indian spouse of a member is eligible for membership. Other qualifications for membership may be set out in the Bylaws.

Art. III, § 2. In practice, however, the NAC does not exclude non-Indians and welcomes as members those who share a sincere belief in the teachings and practices of the church:

> Membership in the Native American Church derives from the sincerity of one's beliefs and participation in its ceremonies. Historically, the church has been hospitable to and, in fact, has proselytized non-Indians. The vast majority of the Native American Church congregations, like most conventional congregations, maintains an "open door" policy and does not exclude persons on the basis of their race.

United States v. Boyll, 774 F. Supp. 1333, 1336 (D.N.M. 1991).

There has been disagreement among the federal courts as to whether non-Indians can be considered members of the NAC for purposes of 21 C.F.R. § 1307.31. In *Boyll*, a non-Indian was charged with unlawful importation of peyote and possession of peyote with intent to distribute. The Government proffered a restrictive reading of 21 C.F.R. § 1307.31, arguing that the regulation's exemption applied only to members of the NAC who are American Indians. The Government claimed that since neither Mr. Boyll or his spouse was 25% Indian, Mr. Boyll could not be a member of the NAC.

The court found that Mr. Boyll had been an active member of the Native American Church since 1981. Mr.

Boyll used peyote only as a sacrament during religious ceremonies of the Native American Church. The court concluded that Mr. Boyll was a member of the church regardless of his lack of Indian blood. The court reasoned that:

> The language of 21 C.F.R. § 1307.31 is clear, unambiguous and wholly consistent with the regulation's history and purpose. The plain language of [the regulation] exempts all worshipers engaged "in bona fide religious ceremonies of the Native American Church." . . . Nowhere is it even suggested that the exemption applies only to Indian members of the Native American Church.

774 F. Supp. at 1338.

Another federal court, however, based on a different factual scenario and a different evidentiary record, held that "the record conclusively demonstrates that NAC [Native American Church] membership is limited to Native American members of federally recognized tribes who have at least 25% Native American ancestry . . ." *Peyote Way Church of God, Inc. v. Thornburg*, 922 F.2d 1210, 1216 (5th Cir. 1991). This apparent inconsistency within the federal court system will have to be carefully watched.

C. Extension of the Religious Use Exemption to Other Religious Groups

Courts have refused to extend the current exemption for non-drug use of peyote to other religions. In denying the exemption to another religious group seeking to use peyote as part of a religious ceremony, one court commented:

> While the exemption facially singles out one religion, we accept the government's explanation that this was done because the NAC is the only tribal Native American organization of which the government is aware that used peyote in bona fide religious ceremonies.

Thornburgh, 922 F.2d at 1217. As with the issue of whether non-Indians may claim the peyote exemption, the question of whether another religion may claim the exemption will certainly be litigated again.

With respect to the religious use of marijuana, the Court of Appeals for the District of Columbia Circuit was confronted with an interesting case in 1989. *Olsen v. Drug Enforcement Administration*, 878 F.2d 1458 (D.C. Cir. 1989). In that case, Olsen a member and priest of the Ethiopian Zion Coptic Church, claimed that his church's members used marijuana as a sacrament. Olsen argued that an exemption from the Controlled Substances Act was required under the First Amendment and in light of the exemption granted to the Native American Church for the use of peyote.

The court first addressed Olsen's argument that failure to grant his church an exemption for marijuana use violated the Free Exercise Clause of the First Amendment. The court concluded that DEA could not accommodate Olsen's religious use of marijuana without unduly disrupting enforcement of the federal marijuana laws.

The court next responded to Olsen's establishment clause/equal protection argument. Olsen maintained that his church was entitled to a marijuana exemption on the same basis as the Native American Church was entitled to its peyote exemption. The court stated that:

> The peyote exemption was accorded to the Native American Church for a traditional, precisely circumscribed ritual. In that ritual, the peyote itself is an object of worship; for members of the Native American Church, use of peyote outside the ritual is sacrilegious . . . Thus the church, for all purposes other than the special stylized ceremony, reinforced the state's prohibition. In contrast, the Ethiopian Zion Coptic Church . . . teaches that marijuana is properly smoked "continually all day."

[INSERT CITE]

The court concluded that Olsen and his church are not similarly situated to the NAC and its members. The court supported DEA's position that the extensive abuse and availability of marijuana, as opposed to the limited abuse and availability of peyote, prevented making a similar exemption for marijuana. In its analysis, the court also relied on the special "trust" relationship between the United States and Native Americans.

D. The Religious Freedom Restoration Act

The Religious Freedom Restoration Act (RFRA) was enacted to clarify the standard to be used by the courts in determining whether a governmental action which burdens religious freedom violates the Free Exercise Clause of the First Amendment. The RFRA makes clear that when making such a determination, the courts must the "compelling interest test."[2]

[2] The "compelling interest test" provides:

(a) IN GENERAL.—Government shall not substantially burden a person's exercise of religion even if the burden results from a rule or general applicability, except as provided in subsection (b).

(b) EXCEPTION.—Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

Religious Freedom Restoration Act of 1993 at § 3(a), (b) (Pub. L. No. 103-141, 107 Stat. 1488).

The use of the RFRA as a defense in a criminal case was recently addressed by the United States District Court for the District of Montana.[3] In that case, defendant Rastafarians were indicted on marijuana possession and distribution charges. The defendants raised the recently enacted RFRA as a defense. The district court found that Title 21, which makes illegal possession or distribution of marijuana, is not directed at religious beliefs or the free exercise of religion. Since Title 21 was found to be a secular, neutral statute which had only an incidental impact on religious freedom, it did not create a violation of the Free Exercise Clause of the First Amendment. The defendants were therefore precluded from using the RFRA as a defense.

While not specifically addressed in the law or in the legislative history, the RFRA does not legalize the use of marijuana or peyote for religious purposes.[4] The only religious group that has been granted an exemption from the laws prohibiting the possession or distri-

[3] *United States v. Best*, Case No. CR 92-76-BLG-JDS-01 (Order dated September 24, 1993).

[4] Both marijuana and peyote are Schedule I controlled substances.

bution of a controlled substance (peyote) is the Native American Church. 21 C.F.R. § 1307.31.

[Plaintiffs' Exh. 117]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CV 00-1647 JP/RLP

O CENTRO ESPIRITA BENEFICIENTE UNIAO DO VEGETAL, ET AL., PLAINTIFFS

vs.

JOHN ASCHROFT, ET AL., DEFENDANTS

DEFENDANTS' RESPONSES TO PLAINTIFFS' INTERROGATORIES No. 16 and 17

INTERROGATORY NO. 16: State what evidence you have that any hoasca has been diverted from the O Centro Espirita Beneficiente Uniao do Vegetal to non-religious use, including in your answer, without limitation, the witnesses and/or documents that support your answer.

RESPONSE: Defendants respond that they have no evidence that hoasca has been diverted from the O Centro Espirita Beneficiente Uniao do Vegetal other than what may be reflected in the grand jury documents. Defendants cannot access these documents without a court order.

INTERROGATORY NO. 17: State what evidence you have that any peyote has been diverted by any member of the Native American Church to non-religious use,

including in your answer the witnesses and/or documents that support your answer.

RESPONSE: Defendants respond that, without having searched the files of the 94 U.S. Attorneys Offices, Defendants have no evidence of any peyote having been diverted by any member of the Native American Church to non-religious use.

Dated: October 19, 2001

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

NORMAN BAY
United States Attorney
for the District of New Mexico

VINCENT M. GARVEY
Deputy Branch Director

/s/ ELIZABETH GOITEIN
ELIZABETH GOITEIN
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Telephone: (202) 514-4470

Attorneys for Defendants

[Plaintiffs' Exh. 134]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CV 00-1647 JP/RLP

O CENTRO ESPIRITA BENEFICIENTE, UNIAO DO VEGETAL, ET AL. PLAINTIFFS
-V.

JOHN ASHCROFT, ET AL., DEFENDANTS

DEPOSITION OF DONALD ROBERT JASINSKI

Washington, D.C.
Thursday, August 9, 2001

The deposition of DONALD ROBERT JASINSKI convened on Thursday, August 9, 2001, commencing at 10:08 a.m., at the offices of William & Connolly LLP, 725 12th Street, N. W., Washington, D.C., before Karen K. Brynteson, Registered Merit Reporter and Notary Public.

* * * * *

[189]

Q. You don't know much about DMT; it that fair to say?

MS. GOITEIN: Objection.

THE WITNESS: Well, you are talking about DMT or hoasca?

BY MS. HOLLANDER;

Q. Well, I started, I just said DMT. You don't know very much about DMT, do you?

A. DMT, well—

Q. In general. You have never studied DMT?

A. No.

Q. And you don't' know very much about hoasca?

A. No. only what has been published.

Q. Do you agree that the hallucinogens do not always, taking a hallucinogen does not always result in one having hallucinations?

A. Yes.

Q. You don't have any evidence, do you, that the effects of hoasca in the religious context is to produce hallucinations?

A. No. only from the descriptions, there have been reports of visual hallucinations is some of * * *.

* * * * *

[Plaintiffs' Exh. 135]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CV 00-1647 JP/RLP

O CENTRO ESPIRITA BENEFICIENTE, UNIAO DO VEGETAL, ET AL. PLAINTIFFS

V.

JOHN ASHCROFT, ET AL., DEFENDANTS

DEPOSITION OF TERRANCE W. WOODWORTH

Washington, D.C.

Friday, September 7, 2001

The deposition of TERRANCE W. WOODWORTH was convened on Friday, September 7, 2001, commencing at 9:04 a.m., at the offices of Williams & Connolly LLP, 725 12th Street, N.W., Washington, D.C., before Karen K. Brynteson, Registered Merit Reporter and Notary Public.

* * * * *

[28] his declaration?

A. Not before, no.

Q. Dr. Grob, do you know who he is?

A. I think I read his declaration as well.

Q. Did you know who he was before?

A. No.

Q. Dr. Strassman, did you know who he was?

A. No, not before.

Q. But you read his declaration?

A. I don't know that I read his declaration.

Q. Dr. Brito?

A. No, I don't.

Q. Did you read his declaration?

A. I don't know.

Q. But you didn't—and you didn't know him before?

A. No, ma'am.

Q. Dr. Kleiman?

A. I read his declaration, and I'm not sure whether we knew each other before. It seems like we have met, yes. I certainly know his name.

Q. And how do you know his name?

[29]

A. He used to work in the department. He has been at Harvard. He is at UCLA. We have interacted or DEA has interacted with him over the years for his thoughts and opinions.

Q. Do you have respect for him?

A. I do, absolutely.

Q. Dr. Lenderts, have you ever heard of him?

A. No, ma'am.

Q. And Dr. Schuster?

A. Yes, I'm aware of Dr. Schuster.

Q. Have you ever worked with Dr. Schuster?

A. Just peripherally.

Q. And how do you know him?

A. I believe he was the head of NIDA years ago, and I interacted with him in the international arena back in the mid-'80s.

Q. Now, do you go by mister, agent, special, anything?

A. Terry is fine.

Q. Terry. Mr. Woodworth, we will keep it at least on that level.

A. Okay.

* * * * *

[66] or the investigation of ayahuasca?

MS. GOITEIN: I am going to object to that. That does raise matters of deliberative process.

MS. HOLLANDER: Are you going to instruct him not to answer?

MS. GOITEIN: Yes.

BY MS. HOLLANDER:

Q. Has the DEA offered you any training regarding RFRA at any time?

A. No.

Q. Have you been obligated to be involved in any training at all as a federal employee?

A. Yes.

Q. About RFRA?

A. No.

Q. I'm sure you have been trained. They spend a lot of time on that.

A. Yes, ma'am.

Q. Tell me what you know about the use of peyote in the Native American church.

MS. GOITEIN: I'm going to object as * * *.

* * * * *

[113]

8—substance containing the hallucinogen DMT is high. This is reflected not only in Congress's findings—let's stop there.

What findings did Congress make that you are aware of that the abuse potential of ayahuasca is high?

A. They placed it in Schedule I. That was their finding. And prior to the Controlled Substances Act, it was controlled under the Drug Abuse Control Amendments.

Q. Have you actually looked at any findings of Congress about DMT?

A. Well, it is in Schedule I. That's a finding. The Controlled Substances Act is the result of Congress's activity.

Q. Have you ever looked at any congressional reports of anything specific about DMT?

A. No.

Q. Have you ever—do you ever actually arrest people as a DEA agent?

A. No.

Q. Are you aware of any arrests in your * * *.

* * * * *

[128]

Q. No medical use.

A. And lack of accepted safety and/or medical supervision, it would be placed in Schedule I.

Q. You go on to say in paragraph 8 that although DMT abuse declined along with the abuse of hallucinogenic substances generally, we are currently seeing an ongoing resurgence in the abuse of hallucinogenic substances primarily associated with the rave club scene.

Do you have any evidence that DMT, there is an increase in the use of DMT?

A. No.

Q. Have you ever seen DMT associated with the rave club scene?

A. I haven't personally, but beyond that I don't know.

Q. Are you aware of any people using DMT in the rave?

A. In the rave clubs, no.

Q. When you refer to the increase in hallucinogens associated with the rave club scene, are you primarily referring to MDMA?

[129]

A. I am referring to any of the hallucinogens that would have shown up at rave clubs, would include MDMA. I would also include ketamine.

Q. Those are the primary ones that you are referring to, isn't that correct—

A. Yes.

Q. —when you talk about this?

A. Yes.

Q. Do you have a copy of the data sheets that you brought? Did you brig a copy of the ones that were attached? Do you have a copy for him to look at?

MS. GOITEIN: I am not sure what you mean by the data sheets. I think I have a copy of everything.

MS. HOLLANDER: That he referred to.

MS. GOITEIN: Again, help me out here.

MS. HOLLANDER: Number B.

MS. GOITEIN: Exhibit B, yes. Mark this.

(Woodworth Exhibit Number 6 was marked for identification.)

BY MS. HOLLANDER:

[Plaintiffs' Exh. 147]

519

ROWLAND NURSERY
615 RIO GRANDE BLVD NW
ALBUQUERQUE, NM 87104
(505) 242-8705

---------- COPY ----------

Oct 30/2001 11:06:30 # 107610 2
Clerk: Linda Lee Cashier: Term #2

Item #	Price	Qty	Amount
GRASSES SPECIALTY 4 1/2 MC			
1640341119	4.99	1	4.99 T1

Phalaris grass

SubTotal:	4.99
TX1:	0.29
Total due:	5.28
Tendered : Visa :	5.28

Your gardening success is important to us. We offer a limited 1 year, 1 time replacement on outdoor perennials, Trees, Shrubs & Roses, Sorry, Sod not guaranteed. See in store policy for details. Plant and sales receipt requir

Card Number :
Expiry Date : 0302
Card Entry : SWIPED
Amount : 5.28
Authorization : 440624
Terminal : 1

CARDHOLDER WILL PAY TO THE ISSUER OF THE CHARGE CARD PRESENTED HEREWITH THE AMOUNT STATED HEREON IN ACCORDANCE WITH THE ISSUER'S AGREEMENT WITH THE CARDHOLDER.

Forensic
And
Criminalistic
Testing, Inc.

4505 Montbel Place N.E.
Albuquerque, New Mexico 87107
505-345-5794 ❖ (800) 748-2742
fact@abqcrimelab.com

Dr. Vincent Papa. Ph.D
Director
Ron Smock
Supervisor/Chief
Toxicologist

[redacted]

NAME: Evan Kay/Ann Delpha | ADDRESS: 20 First Plaza # 700 | PHONE: Work / Home 842-9960

Soc. Sec No. 524 42 1928 | Requesting Agency: Freedman Boyd Daniels | Contact: | Case # F0111001

- ☐ Fingerprints
- ☐ Questioned Document
- ☐ Toolmarks/Firearms
- ☐ Arson
- ☐ Alcohol
- ☐ DNA
- ☐ Trace Evidence
- ☐ Ballistics
- ☐ Toxicology
- ☐ Forensic Consultation
- ☐ Serology

520

ANALYSIS REPORT: ☐ FINAL ☐ PRELIMINARY

ONE SAN PEDRO CACTI PLANT WAS SUBMITTED FOR TOXICOLOGY ANALYSIS OF MESCALINE. THE PLANT WAS APPOXIMATELY 12 INCHES IN LENGTH. A PORTION OF THE PLANT WAS REMOVED (APPROX ½ INCH BY ½ INCH), GROUND, AND EXTRACTED IN METHANOL. THE EXTRACT WAS THEN ANALYZED BY GAS CHROMATOGRAPHY/MASS SPECTROMETER FOR THE PRESENCE OF MESCALINE [redacted] ITS ANALOGUES. ROUTINE LABORATORY PROCEDURES WERE EMPLOYED WITHOUT INCIDENT. CHAIN OF CUSTODY WAS MAINTAINED FROM TIME OF RECEIPT UNTIL TIME OF DISPOSAL TO CLIENT.

RESULT:

THE COMPOUND MESCALINE WAS DETERMINED TO BE PRESENT IN THE CACTI. QUANTITATION WAS NOT PERFROMED, HOWEVER IN RELATION TO KNOWN STANDARDS, THE CONCENTRATION WOULD BE ESTIMATED TO BE LESS THAN 1%.

INTERPRETATION:

MESCALINE AND ITS ALKALOIDS OR ANALOGUES (HALLUCINOGENICS) ARE COMMONLY FOUND IN A VARIETY OF COMMON CACTI, INCLUDING THE SAN PEDRO VARITEY. THE MOST COMMON -THE PEYOTE CACTI IS FOUND IN NORTHERN MEXICO AND IN THE EXTREME SOUTHWEST PARTS OF THE US. THIS CACTI NORMALLY CONTAINS 6% OF THE HALLUCINOGENIC DRUG IN WHICH THE FLOWER OR BUTTON IS DRIED, GROUND AND THE CONSUMED AND IS THE MOST POTENT. HALLUCINOGENIC COMPOUNDS ARE ALSO FOUND IN MANY OTHER COMMON INGREDIENTS. MOST MUST BE EXTRACTED, [redacted] RIFIED AND CONCENTRATED TO ACHIEVE THE DESIRED EFFECTS. EVEN THOUGH HALLUCINOGENIC COMPOUNDS ARE FOUND IN SUCH PLANTS, THERE IS NO SUPPORTING EVIDENCE THAT COMMON "HOUSEHOLD" CACTI ARE ABUSED. ONE MUST HAVE KNOWLEDGE TO THE TYPE OF CACTI, SPECIFIC COMPOUNDS THAT MAY EXIST IN THE PLANT, AND HOW TO EXTRACT THE COMPOUNDS IN A SAFE MANNER FOR CONSUMPTION.

[redacted]

REPORTING SCIENTIST/SUPERVISOR | DATE 11/1/01 | TIME 1000

PLAINTIFF'S EXHIBIT 49

[Plaintiffs' Exh. 148]

521

Forensic
And
Criminalistic
Testing, Inc.

4505 Montbel Place N.E.
Albuquerque, New Mexico 87107
505-345-5794 ❖ (800) 748-2742
fact@abqcrimelab.com

Dr. Vincent Papa, Ph.D
Director
Paul Lasiewicki BA, MFS
Chief Scientist

Duplicate 85-
F011001

NAME: EVAN KAY/ANN DELPHA | ADDRESS: 20 FIRST PLAZA #720 | PHONE (Work) Home: 842-9960

Soc. Sec No.	Requesting Agency:	Contact/Phone #	Case #
525-47-1928	FREEDMAN BOYD DANIELS	SAME	01003 F011001

- ☐ Fingerprints
- ☐ Questioned Document
- ☐ Toolmarks/Firearms
- ☐ Arson
- ☐ Alcohol
- ☐ DNA
- ☐ Trace Evidence
- ☐ Ballistics
- ☒ Toxicology mescaline
- ☐ Forensic Consultation

Physical Description of Evidence: (By client)

10-12" SAN PEDRO CACTUS IN BROWN PAPER BAG

Evidence Custodian:

- Was evidence received properly packaged/sealed? ☒ Yes ☐ No
- If destructive technique is being used, does investigating body have permission from all involved parties (written)? ☒ Yes ☐ No ☐ N/A
- Are known samples provided? ☐ Yes ☒ No
- Specimen type: Plant material
- Received via ☐ Mail ☒ Person ☐ Other

JPSmoke 10-31-01 — Evidence Custodian / Date

FREEDMAN BOYD DANIELS 10-31-01 — Requesting Agent / Date

Final disposition of evidence:

Return to client. — Requesting Agent Initials:

I fully understand that the analysis requested might involve destructive techniques and that the evidence may be completely consumed. I further understand there is no guarantee of findings. The evidence and findings/results will remain property of Forensic and Criminalistic Testing, Inc. with any and all results, information on this form, or findings may be used in a court of law. I affirm by my signature, that the evidence being submitted has not been tampered by any physical or chemical means and remains in its natural state, to the best of my knowledge. I (we) further release Forensic and Criminalistic Testing, Inc. and its employees of any liability. Results and findings are entirely scientific in nature and provide no proof or innocence or guilt.

Evan Kay — Requesting Agent Signature

EVAN R. KAY — Requesting Agent Printed Name

Evidence Custodian: Itemized list of Evidence Received

10-12" San Pedro Cactus in sealed brown paper bag.

CHAIN OF CUSTODY

FROM:	REQUESTING AGENT	TO:	JPSmoke	REASON:	for testing
FROM:	JPSmoke	TO:	BJoseph	REASON:	Confirmatory Testing
FROM:	BJoseph	TO:	[illegible]	REASON:	Confirmation of Mescaline

FACT WITNESS: Ann M. Delpha — Chain of evidence

PURDUE UNIVERSITY

SCHOOL OF PHARMACY AND
PHARMACAL SCIENCES

522

November 2, 2001

Nancy Hollander
Freedman, Boyd, Daniels, Hollander et al.
20 First Plaza, Suite 700
Albuquerque, NM 87102

FAX 505-842-0761

Dear Ms. Hollander:

I received a Federal Express envelope at approximately 9:45 am, November 2, 2001 containing a small "zip loc" plastic bag, with a sticker seal across the opening of the bag signed by Ann Delpha on November 1, 2001. The white sticker had the printed address of the law offices of Freedman, Boyd, Daniels, Hollander, Goldberg & Cline, and had handwriting that stated, "Approx 1 oz by wt Phalaris arundinacea." The bag contained approximately one ounce of a grass-like plant material, with longitudinally striated white and green blades, and had the gross physical appearance of the *phalaris* grass that I witnessed introduced as an exhibit in the courtroom earlier in the week.

The plant material was removed from the bag and dried under high vacuum at 40 degrees Centigrade for 30 minutes to provide semi-dried material to facilitate extraction. This material was then chopped into small pieces.

This sample was then placed into a porcelain mortar and 20 mL of reagent grade chloroform that had been equilibrated with concentrated ammonium hydroxide was added. The plant material was triturated with the solvent for 5 minutes, and the extracting solvent was decanted. This process was repeated twice more with 20 mL of the ammoniacal chloroform. The combined chloroform extracts were filtered through a coarse fritted glass filter funnel to remove plant debris. A Van Urk's spot test for the presence of indole alkaloids gave a positive purple color.

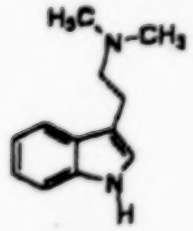
The eluted green solution thus obtained was concentrated to dryness by rotary evaporation at 40 degrees Centigrade. Reagent grade ethyl acetate (10 mL) was added to the residue, producing a green solution with suspended insoluble particles. This solution was passed over a 1 g column of neutral alumina, and eluted with ethyl acetate. A Van Urk's test showed the absence of indoles in the eluted solvent.

DEPARTMENT OF MEDICINAL CHEMISTRY AND MOLECULAR PHARMACOLOGY
1333 ROBERT E. HEINE PHARMACY BUILDING • WEST LAFAYETTE, IN 47907-1333
(765) 494-1461 • FAX (765) 494-1414

The alumina column was than eluted with several milliliters of reagent grade methanol. A Van Urk's test for indoles on the eluted solvent was positive, giving a purple color. This methanol solution was then submitted for low resolution ESI mass spectrometry analysis. The extract from the grass was compared to an authentic sample of N,N-dimethyltryptamine base that had been archived from the sample previously used in the study of Dr. Rick Strassman, and had been approved by the FDA for that work as being authentic and of 99+% purity.

Results

The standard DMT free base was analyzed and the mass spectrum is attached (identified at the top as DN8TD_01 DMT STD). DMT has the molecular formula and molecular weight shown below. The low resolution ESI showed the expected M+1 ion at m/z = 189.



$C_{12}H_{16}N_2$
Exact Mass: 188.13
Mol. Wt.: 188.27

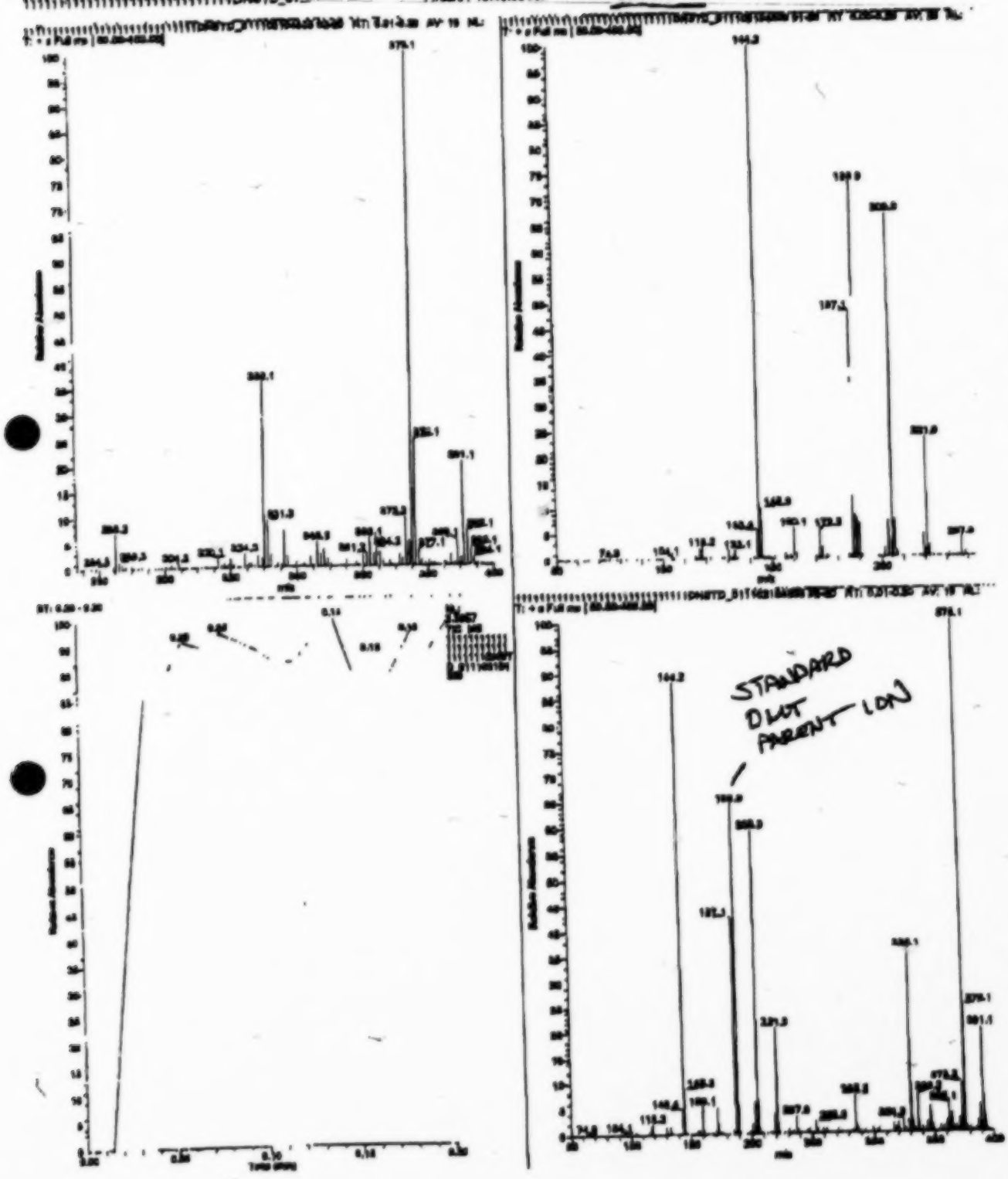
The extract was similarly analyzed, using the same instrument and conditions (identified at the top as DN02B_01 RXN EXTRACT – 2). The mass spectrum was complex due to the presence of a number of plant constituents, and although the concentration of DMT in the extract was low, ***an M+1 ion at 189 indicated the presence of DMT.***

Because of the short amount of time available, it was not possible to optimize the extraction process and purify the DMT contained within the extract, nor did we have the time to quantitatively measure the amount of DMT present, but the mass spectrometry analysis does indicate that the extract of this *phalaris* sample does contain DMT.

Sincerely,

David E. Nichols, Ph.D.
Professor of Medicinal Chemistry
And Molecular Pharmacology

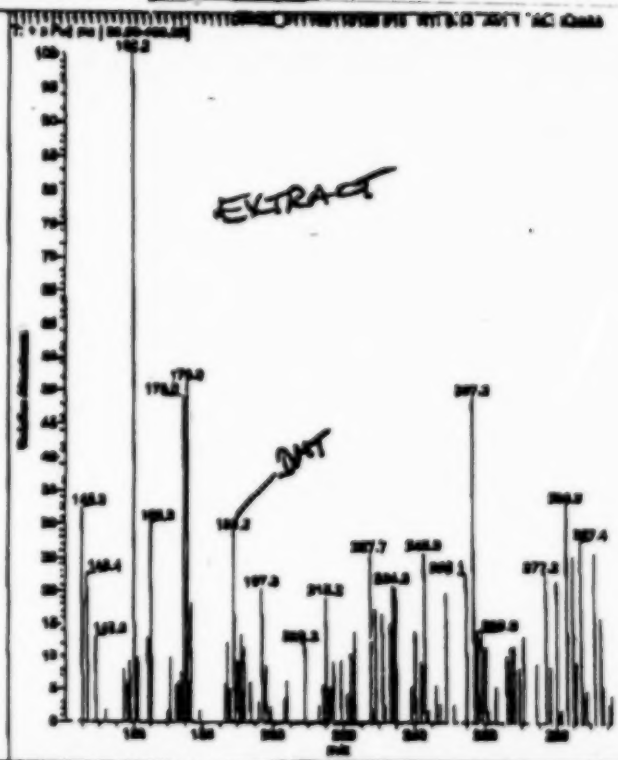
DMT STD

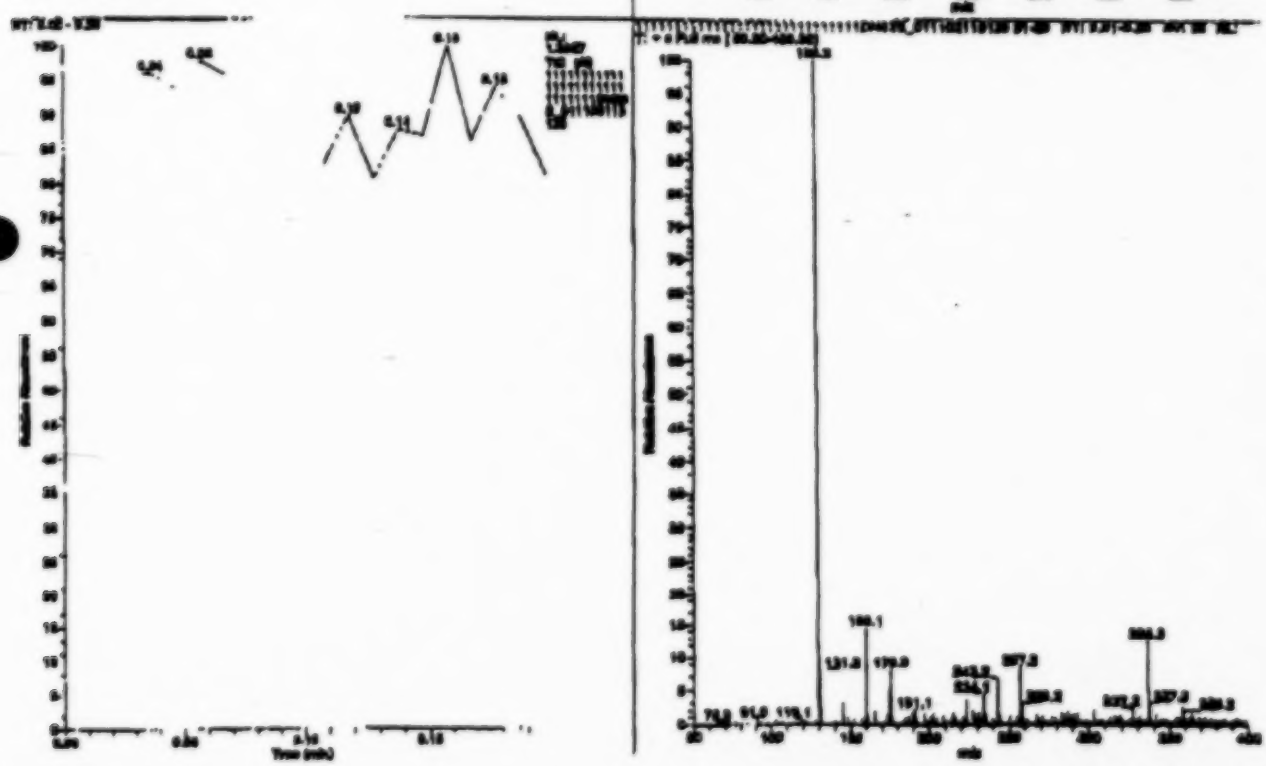


11/02/01 11:04:07 AM RUN EXTRACT - 3

1 Status Log Time: 0.02

API SOURCE	
Source Voltage (kV):	4.51
Source Current (uA):	0.54
Vaporizer Thermocouple OK:	No
Vaporizer Temp (C):	-0.00
Sheath Gas Flow Rate ():	79.20
Aux Gas Flow Rate():	19.71
Capillary RTD OK:	Yes
Capillary Voltage (V):	10.39
Capillary Temp (C):	270.20
8 kV supply at limit:	No
VACUUM	
Vacuum OK:	Yes
Ion Gauge Pressure OK:	Yes
Ion Gauge Status:	On
Ion Gauge (x10e-5 Torr):	0.98
Convectron Pressure OK:	Yes
Convectron Gauge (Torr):	0.79
TURBO PUMP	
Status:	Running
Life (hours):	26262
Speed (rpm):	60000
Power (Watts):	34
Temperature (C):	40.00
ION OPTICS	





525

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CV 00-1647 JP/RLP

OCENTRO ESPIRITA BENEFICIENTE
UNIAO DO VEGETAL, ET AL., PLAINTIFFS

vs.

JOHN ASHCROFT, ET AL., DEFENDANTS

TRANSCRIPT OF PROCEEDINGS

Motion Hearing
Oct. 22, 2001

BEFORE: THE HONORABLE JAMES A. PARKER
United States District Judge

APPEARANCES

FOR THE PLAINTIFFS:

NANCY HOLLANDER
JOHN W. BOYD
FREEDMAN, BOYD, DANIELS,
HOLLANDER, GOLDBERG & CLINE
20 First Plaza, Suite 700
Albuquerque, New Mexico 87102

FOR THE DEFENDANTS:

ELIZABETH GOITEIN
ADAM J. SZUBIN
Trial Attorneys
UNITED STATES DEPARTMENT
OF JUSTICE CIVIL DIVISION
901 E. Street, NW, Room 1032
Washington, D.C. 20004

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[10]

Q. Are you the highest authority for the UDV in the United States?

A. In this country I represent the highest authority.

Q. Are there other mestres in the United States?

A. There are.

Q. Are any in this room?

A. Yes.

Q. And who are they?

A. Mr. Daniel Tucker is one of the plaintiffs in this case, as well.

Q. Now, could there come a time when he could be the representative mestre?

A. Certainly.

Q. So this isn't something you hold for life?

A. Absolutely not, and there are other people as well who I imagine that down the road will be occupying the position that I today hold.

Q. And we are going to talk about the organization of the UDV, but what this case really concerns is the sacrament of the UDV; is that correct?

A. That is correct.

MS. HOLLANDER: May I approach, Your Honor?

THE COURT: Yes, you may.

MS. HOLLANDER: Your Honor, just so the Court knows, we have exchanged exhibits with the defendant so we have all [11] of theirs and they have all of ours, so you won't see me giving them copies.

Q. (By Ms. Hollander) I have shown you what has been marked as Plaintiff's Exhibit Number 29A and 29B. Would you tell the Court what these exhibits are, and start with an explanation of what it is that the—what is the UDV sacrament?

A. The sacrament of the UDV is in a tea that is prepared from two plants that are indigenous to the Amazon Forest. Plaintiff's Exhibit Number 29A is a picture of a plant that we speak of called Charona, which the leaves of the plant are boiled in the preparation of the tea. They are boiled with a vine which is pictured in Plaintiff's Exhibit 29B, which is gathered in the forest or in the temples around the UDV where it has been planted, and in ritual prepared. They are united together and boiled in water, and from them the tea is made.

Q. Do these photographs fairly and accurately show—does 29A show the plant that you referred to as Charona?

A. Yes, it does.

Q. And does 29B show the plant that you refer to as Mariri?

A. Mariri, yes. M-a-r-i-r-i.

MS. HOLLANDER: Your Honor, I would move the admission of 29A and B.

THE COURT: Any objection?

[12]

MS. GOITEIN: Yes. I object on the grounds of relevance, Your Honor.

THE COURT: Okay.

Q. (By Ms. Hollander) Now, you have referred to them as two names, Charona and Mariri. Do you know what their official names are?

A. Well, to us the correct names are the names that we referred to. They have botanical names, whieh to our understanding were given later than the names that we use. The botanical names presuming that are you asking me is Psychotria Viridis, what we call Charona, and Banisteriopsis Caapi for what we refer to as Mariri.

Q. Now, you said that the botanical names came later. What do you mean by that?

A. Well, there is—the traditional names of these plants, as they have been identified by the people of the Amazon Forest. The knowledge of the use of these plants goes back several hundred years, and they had names by which they were known by the forest people by which they were given. There is a story that is told within our religion about the origin of these plants and the names that they were given, and that is the names that we use.

Q. When you first joined the UDV, what year was that?

A. I first participated in a session of the UDV in 1990, and actually joined in 1992.

[13]

Q. And what name did you know them by when you first joined?

A. The names that they were called within the UDV.

Q. And are you saying that those names existed—now when was the UDV founded?

A. The UDV was founded in 1961.

Q. And is it your understanding that these names existed before that?

A. Yes.

Q. I want to ask you a little bit about the plants, but before I do, I think it's important that we explain to the Court—and visually is always better—the organization of the UDV. And may I approach, Your Honor?

THE COURT: Yes, you may.

MS. HOLLANDER: I didn't want to bend this, but it goes with this exhibit. I have handed you Plaintiff's Exhibit Number 30 and Plaintiff's Exhibit Number 94, and I would like you to explain, using these pages and identifying them, how the UDV is organized.

A. I will do my best. Plaintiff's Exhibit Number 94 shows a map of Brazil identifying each of the cities and areas where there are temples of the UDV. Within the UDV there are three different classes of organized communities of people who are members of the religion. There is nucleos, prenucleos and distributions that are authorized by the general headquarters [14] which is in Brazil, the white star in the near center of the country in the federal district of Brazil.

Each of the stars represent areas where there are nucleos or centers of UDV, where there are temples and where there are communities of people who are members of the religion all throughout Brazil.

Q. Approximately how many people are members at this time?

A. About 7,000, between 7 and 8,000. The Plaintiff's Exhibit Number 30 shows the different structures of organization within the UDV. There is a spiritual hierarchy, which is responsible for the transmission of the doctorine, the teachings of the church, and then there is an administrative organization for the church as well, which takes care of the secular responsibilities and concerns, which I believe I have given some description of in my declaration.

So these graphs represent a visual explanation of how the UDV is organized, both in terms of the transmission of its doctrine, as well as the material structure of its administration.

Q. In terms of the administrative organization, for example, what does the president and the other officers, what do they do?

A. Their responsibilities are to maintain the legal contracts in terms of that the center would get into. They're [15] responsible for representing the center in terms of any legal concerns that are there. They hold material property of the center and are responsible for the care and maintenance of the temples, the material benefits in terms of personal property of the center. All of those are administrated by the president and his assistants.

Q. Does each of these nucleos have a structure?

A. Yes, they do.

Q. And what is that structure called?

A. I am not sure.

Q. Is it called a church or a temple or—

A. Well, within the UDV they are called, you know, nucleos or prenucleos depending on the level of organization. All of the individual communities of the UDV all have temples where the rituals occur. Most of them have plantations that they own where the plants that are used in our ritual sacrament are grown for preparation.

Q. I guess I wasn't clear. I meant do they have a physical structure?

A. Oh, yes. They all do.

Q. And how is it determined whether someone is a member of a particular nucleo?

A. Well, there is a procedure that they go through to become a member, which I have described at length in my declaration or deposition.

* * * * *

[38]

A. Extensive.

Q. Have you seen these people who have been drinking the tea for many years walking?

A. I think, yes.

Q. Raising families?

A. Yes.

Q. Have you ever seen any of them in their jobs?

A. Yes, I have.

Q. So are you speaking now just from what people have told you or from your personal experience?

A. Both. What I have been told and my observations and personal experience.

Q. Are the people you know in the UDV in Brazil, do you know any who are medical doctors?

A. Yes, I do. Several.

Q. Do you know any who are lawyers?

A. Yes, I do. Several.

Q. Have you met any UDV members who are judges?

A. Yes, I have.

Q. And have you met any UDV members who are in the government in Brazil?

A. Yes, I have. I have met a person who works for the Attorney General's Office in Brazil, and I have met two Brazilian congressmen who are UDV members. And there is also a—state representatives who are UDV members, in state [39] governments in Brazil, as well.

Q. Do you know if, if you know, do you know whether, in their official capacity, other members of the government know that they are members of the UDV?

A. Yes, they do. Some—in some cases more, in some cases less. People tend to be very discrete and not speak about it, it's their religion, but in most cases I think they are aware that they—

MS. GOITEIN Objection, Your Honor. That answer is based speculation.

THE COURT: Okay. I need to interrupt for just a moment. The court reporter needs to change his audio cassette. We need to recess for about five minutes.

(A brief recess was taken.)

THE COURT: Court is in session.

MS. HOLLANDER: Before I continue, you said we were going to move to the other courthouse. Would it be okay to stay here for today so we don't have to move all the boxes? Would that be okay?

THE COURT: That's fine.

MS. HOLLANDER: I think that would be our—we have a lot of equipment and we have it all set up.

THE COURT: Sure. That's fine. You can leave your notebooks and all here.

MS. HOLLANDER: Thank you.

[40]

Q. (By Ms. Hollander) Now, you were just speaking about the health of the UDV members. Why then, having your belief that the tea is so healthy, do you screen new members and ask them questions about their health and any prescription drugs they are taking, et cetera? Can you explain that?

A. Sure. As well as I think it's already come out in the depositions and declaration and will come out more over these next few days.

The UDV, in its interest to exercise great care and responsibility in the distribution of our sacrament, commissioned a study that was done in, I believe it was 1993, studying the human pharmacology of hoasca. And as a result of that study there was some recommendations that came back to the UDV from the scientist that conducted the research that there could be some possible concern about the combination of the tea with other prescription medication, increasing their psychotropic medications that are being prescribed by

psychiatrists and medical doctors, that at least on a theoretical level, could in reaction with the tea be harmful.

So as an abundance of caution, we want to make sure that nothing that we do in any way is harmful to anyone, so we screen the new members for medications that they might be taking or health problems that they may be having so we can be aware.

Q. And we will be hearing more about that later, so I am [41] going to move on to other things with you. And we will let the doctors talk about the screening. But in your road through life, shifting subjects here again, in your road through life, what religion—did you have a religion when you were growing up?

A. I was raised in the Jewish religion, but neither of my parents—or both my parents confessed to me that they didn't believe in God. So my religion was more of a social/cultural, had more of a social/cultural meaning than it did have a religious meaning.

I remember on a couple of occasions in Temple with my father, and confessing to me his uncertainty about the existence of God. So there was kind of a duality in the religion that I was raised in, where it was part of my identity but didn't really speak to me spiritually.

Q. And did you—were you bar mitzvahed in that religion?

A. I was.

Q. And some of your family is very active in Jewish causes; is that correct?

A. That is correct. Very prominent.

Q. Now, when did you leave the Jewish faith?

A. I am not sure you ever really leave Judaism, to be honest. I am not sure that I did. It stays with you through life, it's part of your identity. And within the UDV now, it [42] goes back to the time of King Solomon, so there is a lot of Judea heritage that is still part of my life, so I am not sure I left.

Q. You said the UDV goes back to King Solomon and previous you said that the UDV began in 1961, so perhaps you should clear that up.

A. Sorry. Well, there is a--within the spiritual tradition that we follow, there is a history of the evolution of our religion, which began on this earth at the time of King Solomon, and went through different periods of appearing and disappearing on the earth since that time.

The UDV that was, we said, recreated on the 22nd of July in 1961, has a spiritual history that goes back several hundred years.

Q. And again, we are going let others talk about that, so we are going to skip it a little bit. But did you ever engage in any other religious faiths, or were you ever involved in any other religious organizations before joining the UDV?

A. Yes, I was. My own spiritual quest, my quest for connection to God and understanding the meaning of religion in my life has been going on from the time I was 18 years old. And at that time I began a spiritual practice that involved Eastern disciplines of meditation and Yoga and self-inspection and self-understanding. And I practiced that for many years. [43] It was an important discipline in my life.

And then there came a point where I—there were elements of that philosophy and belief system that I

found were no longer—I no longer believed. I felt that I was needing something more. There was something that I had hoped for from those experiences that—I was not satisfied, and so, I entered into a phase of my life where I started to explore Native American spirituality. Started sweat lodge ceremonies, and then I, at one point, I became introduced to the Native American Church.

From my involvement with the Native American Church I met several other Indians that had participated in ceremonies that involved the sacramental use of plants among Indian tribes in Central and South America. And so, there was a period of several years prior to my coming to the UDV that I had the privilege and honor of participating in ceremonies among Indian tribes in different parts of North, South and Central America in different kinds of rituals.

Q. During the time that you were involved in the Native American Church, did you ever ingest peyote as a sacrament, not as a drug, in a Native American Church ceremony?

A. I never ingested peyote as a drug. I have ingested it as a sacrament within the Native American Church service.

Q. When you went to those ceremonies, did anyone ever ask you any screening questions?

[44]

A. No

Q. Did anyone ask you whether you were taking any prescription medications?

A. No.

Q. Did they ask you whether you had ever been in a mental hospital or had any other problems?

A. No.

Q. Have you, in your own experience in the Native American Church, ever seen pregnant women ingest peyote?

A. Yes, I have.

Q. Have you ever seen children ingest peyote?

A. Yes, I have.

Q. How long—do you have any idea how many times you have been involved in any Native American Church ceremonies?

A. I believe—less than ten. I tried to count one day and I wasn't sure. Somewhere between five and ten.

Q. Are you familiar with the practices of the Native American Church?

A. Yes, I am.

Q. And are you familiar, in addition to just your own participation, are there other ways that you are familiar with it?

A. Through things that I have read, people that I have spoken to, as well.

Q. And you were involved in a movie about the Native [45] American Church?

A. Yes, I was. I was the executive producer of a film called "The Peyote Road," that was used to help the Native American Church tell its story, to secure protection for their religious faith.

Q. Can you tell us the ways in which, in your view, and based on your personal experience and knowledge,

the Native American Church is similar to or different from the UDV?

A. I think there is a lot of ways and I actually found it to be quite remarkable. I came to the UDV after I had already been introduced to the Native American Church, and some of the elements that were common were striking, given that they appeared in different parts of the world and they had no communication with one another to know what the elements of the ritual were.

For both, they use plants that are central to their religious practice that they both refer to as a sacrament, and they both refer to as Holy Communion. In the UDV it's the hoasca tea. In the Native American Church it's peyote. These plants all—both contain psychotropic substances that in their chemical form are considered controlled substances under the laws of this country, and in some international arenas, as well.

And yet—and yet within the religious context, they are used—the plant material is used in a completely [46] different way; a reverential way, a sacred way, in ways that drugs of abuse are not utilized.

Q. Let me stop you before you go on. I want you to state the other ways, but what is the substance in peyote?

A. The substance in peyote is mescaline.

Q. And what is the substance in the tea that the UDV drinks which you call hoasca; correct?

A. Dimethyltryptamine.

Q. Also known as DMT?

A. Also known as DMT.

Q. To your knowledge, does the Native American —do you know whether mescaline can be found naturally in any other plants besides peyote?

A. Yes, it does exist in other plants besides peyote.

Q. Do you know of any?

A. I know of the San Pedro Cactus as one.

Q. Do you know whether, to your own knowledge, DMT exists naturally in any other plants besides the Psychotria Viridis?

A. I have read many, many plants contain dimethyltryptamine.

Q. In the UDV, would it be possible to substituted a different plant?

A. For us, no.

Q. And why is that?

[47]

A. Because we don't use the plants because of their biochemical properties. We use the plants because of the spiritual significance that they have for us.

Q. Those particular plants?

A. Those two particular plants.

Q. Do you know whether, in the Native American Church if, for example, somebody can't get to the peyote gardens in Texas, can someone go to the store and buy some San Pedro Cactus and use that instead?

A. Neither mescaline nor San Pedro Cactus would be used in a ritual in a Native American Church. It's not their sacrament.

Q. What are other ways that you know that the Native American Church and the UDV are different or similar?

A. They are similar in the sense that both ceremonies are run by spiritual authority within the Native American Church. It's the road map within the UDV. It's the directing mestre. They are, within the Native American Church, they—are they use a symbol within most of the Native American Church services that I have witnessed of a new moon, which is made out of the earth, and the peyote cactus is placed at the center of that moon. The symbol of the new moon also appears, along with the sun and the star, on the flag of the UDV, which is flown outside all the temples of the UDV.

Within the Native American Church religion their [48] origin story relates to a woman that brought peyote to the people. Within the origin story of the UDV it goes back to a mysterious woman from whose grave the plants—that where a plant that we use in our ritual grows. There is a story within the Native American Church that speaks about the significance of the morning star, and there is a point in their ceremony where they pray to the morning star. Within the UDV there is also significance to the star of the morning and the morning star. It has a particular call that is made to it, stories around it.

Both of them are Christian in origin. The Native American Church, they pray to Jesus and—within most of the Native American Church, at least, they pray to Jesus. Within the UDV it's also a Christian religion, and Jesus and the Divine Holy Spirit is invoked and called in every session.

MS. GOITEIN: Objection, Your Honor. This witness has not been qualified as an expert in the Native American Church, and there has been no laying of foundation for his personal knowledge of the origins of the Native American Church and the Christian religion.

THE COURT: Well, I understand that a part of his testimony is based on his personal experience in attending some Native American Church ceremonies. And I—from that extent it's based on his personal experience there. To the extent that it's whatever he has read, I assume your objection [49] is hearsay.

MS. GOITEIN: Yes, Your Honor. I didn't object until the end because certain things appeared to be based on things he could have seen, but I don't see how he could have seen the origin of the Native American Church and its Christian origins. So my objection there would be hearsay.

THE COURT: All right. Go ahead.

Q. (By Ms. Hollander) From your personal knowledge, do you know what the Native American Church teaches about the use of alcohol and illegal drugs?

A. It's strongly discouraged. Alcohol is considered a scourge among many communities of Indians where the Native American Church originated in group, and illegal drugs are also discouraged. I have been in teepee ceremonies where they have been—where there have been ceremonies where they have been spoken against, and generally I think that many Indians come to the Native American Church and people come to the Native American Church seeking to reform their lives from alcohol and drug abuse.

Q. Now, do you know what a drug tourist is?

A. I have heard the term described, and I've got some idea what context it's used.

Q. If someone referred to someone as a drug tourist, in your mind what would that mean?

A. It would mean somebody that was interested in [50] experimenting with different kinds of drugs and perhaps went to different places where there were different kinds of drug experiences that were offered, and they made tours to those places.

Q. What differentiates you, to have been involved in the Native American Church, and now in the UDV, from someone who might be described as a drug tourist?

A. Well, to start with, the use of peyote is a sacrament within Native American Church, and the use of a hoasca is a sacrament within the UDV. It's not a drug. These are holy manifestations of God that are received within the context of religion, within the context of a ritual for the purposes of a spiritual notion that the people come to the Native Church are not looking for a drug experience, and the UDV is not a drug experience. It's a religion.

So, if somebody were to ask me what, you know, "Why aren't you just looking for, you know, kind of a drug experience?" It just would show that they don't understand either what the Native American Church is or what the UDV is. The religions are a very, very serious context for spiritual growth and spiritual level. It's not a drug trade.

Q. You said earlier that one never really stops being a Jew. Now you are a member of the UDV. Do you say the same thing about the Native American, or have you, as people do, change to your faith?

[51]

A. No. My religion is the UDV. I didn't consider the Native American Church my religion.

Q. Why did you leave the Native American Church?

A. I think what I found when I was introduced to the UDV was something unexpectedly profound. That I felt at home. I felt like I had found the place where—the community of people, the doctrine, the theology, the beliefs within which I wanted to live my life.

Q. We will get back to that, too, but I want to shift again, because we have limited time and a lot of testimony. I want to talk about one of the other issues that this hearing is focused on, and that is the diversion of the sacramental tea from the UDV.

Let me start by asking you, are you aware of any time, in your personal knowledge, that any of your sacramental tea has been diverted from its legitimate church use to some illicit channel?

A. I am not aware of any instance where that has occurred, over the 11 years that we were involved in bringing the tea into this country.

Q. Now, in your deposition you explained how the sacramental tea begins in Brazil and gets to you, or how it did before May of 1999 when it was seized; correct?

A. Correct.

Q. And I wanted to just briefly go through that just [52] with some exhibits, but can you explain why you have to import the tea and not just grow the plants here?

A. Sure. These are tropical plants. They grow in the Amazon region. Theoretically it would be possible

perhaps to grow them in Hawaii or Florida. In New Mexico, in Colorado, where we—you know, a good number of our disciples live, and Washington, with the amount of snow that we get and the amount of cold that we get, the plants—it's not their nature. So we have begun experimenting with the possibility of growing these plants here in this country, and perhaps down the road, if this matter gets resolved and we are free to continue our religion in this country, we would try to develop our science more to be able to grow them. But I have my own doubts if it would ever be possible to really grow them. They are tropical plants.

So, we have made arrangements with temples in Brazil to participate in preparing the tea for our use here, and then going down to help them with that, and then having the tea imported into this country. There isn't plants in this country that we could use to make our sacrament.

Q. Do you know if there are any plants in this country, if you know, that contain DMT that do grow in this country?

A. Yes, there are.

Q. Now, I would like to talk about diversion.

MS. HOLLANDER: May I approach, Your Honor?

[53]

THE COURT: Yes, you may.

MS. HOLLANDER: I want to give you several exhibits. This will be 31, 32, 33 and 34, if I have organized these correctly. We will find out here in a minute. Let's start with number 31.

Q. (By Ms. Hollander) Let me ask you first, have you had a chance, while you're sitting up here, to look at the documents that are 31A, B and C, 32A, B, C and D, and 33A, B, C, D and E, and 34?

A. Yes, I have.

Q. Have you seen these documents before?

A. Yes, I have.

Q. Are these documents that were kept in the normal course of business in the offices of the UDV?

A. Yes, they are.

Q. Were you the person who kept them?

A. Yes, I am.

Q. Was it the regular practice of the UDV to keep documents such as these?

A. Yes, it is.

Q. Now, in May of 1999 when the government agents entered your office and seized the tea, did they also seize these documents?

A. Yes, they did.

Q. So we are now looking at copies that came back to us [54] from the government seizure; is that correct?

A. That is correct.

Q. And what I would like you to do—

MS. HOLLANDER: Your Honor, I would like to move these into evidence.

MS. GOITEIN: No objections.

THE COURT: They will be admitted without objection (Exhibits 31 through 34 are admitted.)

MS. HOLLANDER: Thank you.

Q. (By Ms. Hollander) Let's start with 31, and basically what I would like you to do is explain how in your deposition you did explain this in detail, so you won't have to go into that much detail but 31A, what is that?

A. 31A shows a shipper's letter of instructions from varied airlines. As I described in my deposition, typically once the tea was prepared, once—it was then brought to—if it wasn't brought by hand to the United States, it would have been sent to an airline who would have accepted receipt of the tea for the purposes of shipping it to the United States.

Q. And was this filled out, to your knowledge, by someone in Brazil?

A. Yes, it was.

Q. What is the tea called in this document?

A. It says, "Medicinal tea, Hoasca herbal."

[55]

Q. And do you see the date?

A. It looks like from 1995.

Q. 25/7/95, correct.

A. July the 25th, 1995.

Q. And what is 31B?

A. 31B, this looks like an airway bill from Vatic Airlines regarding the same shipment of tea.

Q. The same shipment. And 31C, what is that?

A. 31C was a letter that I sent to our customs broker in Los Angeles advising them of the arrival of this particular shipment in the United States.

Q. And how many liters is that shipment?

A. My letter says it was about 50 liters.

Q. Fifty liters?

A. Correct.

Q. And do you see the shipping charges on the 31B?

A. I do.

Q. What is that?

A. That would have been the charge from the airlines to ship it from Brazil to Los Angeles.

Q. And what is the number?

A. 270.08.

Q. Now, can you look at Plaintiff's Exhibit Number 34. What is Plaintiff's Exhibit Number 34?

A. This is a spreadsheet that was used to kind of figure [56] the costs of the different elements of shipping the tea from Brazil to the United States for our religious use.

Q. Did you prepare the spreadsheets or someone under your direction?

A. Either I did or someone under my direction.

Q. Is there a reference to this particular shipment?

A. Yes. You can see, if you follow along, the day of July '95, the international shipping cost of $207.00.

Q. And it says, "Fifty liters"?

A. Fifty liters.

Q. Now, we don't have complete files of all of these. Why is that?

A. Because after the government took them, I no longer had control of my records. I don't know why we don't have all the documents. All I know what was in my file at the time of seizure.

Q. Let's look at 32A. What is that?

A. This describes a shipment of tea that was made in January of 1997.

Q. What is—how is it described there?

A. "Infusion of mixed herbs, herb tea."

Q. Is that an accurate description of the tea?

A. That's what it is. It's an infusion of plants in water. It's a tea.

Q. What is 32B?

[57]

A. 32B was the letter that I wrote on January the 16th of 1997 letting our customs agents in Los Angeles know about the arrival of this particular shipment.

Q. And how many liters does it say?

A. It says two 50-liter containers.

Q. So there is 100 liters?

A. Yes.

Q. Does 32B describe the plants, and what does it call them?

A. "The two plants which are known as Mariri and Charona are used to make a tea."

Q. Now, to your knowledge, if you know, if someone wanted to know in 1997 what the botanical names for Mariri and Charona are, would that be very difficult?

A. No. It would not be difficult at all.

Q. And what is 32C?

A. 32C shows the—these are the costs that were billed to the UDV from our customs broker at FXG International. This is an invoice for the different cost of their service of receiving the tea and passing through customs and the other government checks that they do for any substances imported into this country.

Q. And what is 32D?

A. 32D reflects notes from my personal planner, which shows how the tea, the approximately 100 liters of tea that we [58] received, was going to be distributed among the—at that time, four areas where there were communities of UDV churches or members.

Q. And then if you go to Number 34, is this one identified also?

A. It mentions the hundred liters. The charges don't appear to have been put into the spreadsheet.

Q. Were there other spreadsheets? Might there—did you stop keeping spreadsheets? Why does this one end?

A. I don't remember.

Q. We have one more and that is 33A. What does that show?

A. 33A shows another shipment of tea. This was in July of 1997.

Q. And 33B?

A. 33B is the letter that I wrote to the custom service to call their attention to—I mean to our customs broker, excuse me, to call their attention to the arrival of our shipment.

Q. And this was 130 liters?

A. That is correct.

Q. And 33C?

A. 33C shows the transition of—this is something from the customs broker and indicating that the shipment had arrived that was given to them from Vasco Airlines, and [59] actually, this may have been going to the overland carrier that was to pick up the tea at Vasco Airlines and then, on authority of our customs broker, deliver it to us in Santa Fe, New Mexico.

Q. And 33D is from another entry summary as described?

A. This from the U.S. Customs Service indicating their examination of the tea that had come in and its release to our customs broker.

Q. And this was described as 130 liters, and 33E, what is that?

A. 33E shows the division of the tea, this particular shipment, over—for the use of the four different areas that at the time existed in the United States where the tea was used as a religious sacrament.

Q. And does that say 120?

A. It looks like it does.

Q. What would have happened to the ten liters?

A. I believe it was a way of dividing it up equally among the four groups and then having an extra ten liters to keep in Santa Fe.

Q. Did you keep track of every bit of tea that came into the United States?

A. Yes, I did.

Q. How did it get from your office in Santa Fe to the various places where you had UDV sessions?

[60]

A. Usually they would be brought by hand by a UDV member to—somebody would be charged with the authority of picking up the tea and bringing it. Either I would bring it in my rounds of visiting the different communities, or somebody who would be coming to Santa Fe for a particular reason would pick it up and would bring it back to the person responsible in another area.

Q. And were they obligated to tell you when it arrived?

A. Yes. For example, if I was going to be sending some tea to Colorado with somebody, I would notify Mr. Daniel, who was responsible in Colorado, that there was a certain quantity of tea that was coming, who the individual who would be bringing it, when they would be arriving, and how much to expect to be arriving with that person.

Q. You have—you were present when the DEA agent from the DEA Diversion Control Department, Terrance Woodward, gave his deposition. I am sure you have read his deposition, and so, you know that he went through, at my request, a hypothetical anti-diversion program for the UDV, which we will get to

later in this hearing. But knowing that, would you have any problem in complying with anything that Mr. Woodward described?

A. Absolutely no problem at all. And as a matter of fact, almost every element of the system that he designed already in place and already practiced by us.

[61]

Q. What did he design that you didn't do already?

A. The only element that I remember that was not part of the design that he gave me that we did was having an official government agency in Brazil that would be in communication with the DEA in this country, so that when there was a shipment of tea being shipped from Brazil, there could be government-to-government communication about a shipment, rather than just the import or export communication.

Q. And how would you—would that be acceptable to the UDV?

A. Absolutely.

Q. The other question that we lose here is why did you wait so long to file this lawsuit? You're asking for a preliminary injunction. So what I would like you to do is tell the Court what you did do during the interim between May of 1999, when the government agents stormed into your office, seized the sacramental tea and all your personal and business papers on that day, and what you did between then and now?

MS. GOITEIN: Objection, Your Honor. That was an unfair characterization. It's argumentative.

THE COURT: Why don't you rephrase it and say when they entered his office.

MS. HOLLANDER: I will be happy to, Your Honor.

THE COURT: Go ahead.

Q. (By Ms. Hollander) What did you do between May of [62] 1999, when the federal agents from the DEA entered your office and seized the sacramental tea and seized all of your personal and business papers—I believe 40,000 pages of them at that time?

A. I am not certain that they were agents of the DEA at that time of the seizure. They identified themselves as agents of the U.S. Customs Service.

Q. I think you're correct and I misspoke, the Customs Service.

A. I think my effort from that moment, continuing up to this moment, has to be try to explain the nature of our religion, the nature of our use of this tea as a sacrament, to the authorities of this country, in hope that we would get the respect, the legal protection and the understanding that I believe that we merit and we deserve.

It started with my conversations with Special Reimer, who was in charge of this particular action that was taken by the U.S. Customs Service, to try to explain to him that this tea that they were concerned about was a sacrament within our religious ceremonies.

I pointed him to the files that—through which he could better understand our religion, knowing that they would be conducting a pretty thorough investigation, and along the way answered questions and helped to understand; cooperated fully to the best of my ability with the people who were there [63] investigating.

It was clear to me from the very beginning that it was very unlikely that they had any idea that we were a religion, that they believed, you know, we were importing some kind of dangerous drug, so I did my best to answer their questions and help them understand the nature of what it was that they had encountered, perhaps inadvertently.

The next step I think I took was to hire legal counsel in New Mexico, your firm, in the hopes of being able to avoid a criminal prosecution for the practice of my religion, and also to be able to continue communications officially. I asked actually Agent Reimer, at the time, about the name of the—about what would happen next. He told me that he would just pass it all on to the U.S. Attorney's Office, and from there the case would be administered by the Justice Department and the—in the State of New Mexico.

And I asked him who the individual was who would be responsible at the U.S. Attorney's Office. He said that he didn't know, but that in any event, they wouldn't communicated directly with me. I would need to have legal counsel who could be in communication with them.

Subsequent to hiring your firm, I wrote a letter to the Assistant U.S. Attorney, Jonathan Gerson, who at the time was the head of the criminal division of the U.S. Attorney's Office, and a letter—along that letter to, I believe, U.S. [64] Attorney Chuck Barth, who my understanding was that he was the head of the division of narcotics and dangerous drugs at the U.S. Attorney's Office in Albuquerque.

Q. And I would like to show that you letter.

MS. HOLLANDER: May I approach Your Honor?

THE COURT: Yes, you may.

Q. (By Ms. Hollander) I would like to show you what has been marked as Plaintiff's Exhibit 112, and ask you if that is the letter that you wrote to Mr. Jonathan Gerson and Mr. Charles Barth?

A. This was the letter that I wrote. It was on the seizure occurred on the 21st of May. This letter was written and send on the 9th of June.

Q. And after you sent that letter, were you involved in any other—did you have any other relationship with the U.S. Attorney's Office?

A. Yes, we, through communications, we indicated our willingness, interest and desire to make as much information available to them as possible, so that they could better understand the nature of the dilemma that I think altogether, we found ourselves in.

And through communication, through counsel, an offer was made to put on a presentation for the U.S. Attorney's Office. That was attended by Mr. Gerson, other Assistant U.S. Attorneys, Mr. Reimer, representing the U.S. Customs Service, [65] through which we had offered a two-day presentation about the UDV religion, about our use of the tea as a religious sacrament, about the medical studies that have been done in relationship to the use of the tea.

And we were granted one day to make a presentation to Mr. Gerson and the people on his staff and who he invited, and that lasted all day long on—sometime in September of 1999.

Q. Where was that meeting?

A. That was held at the offices of Freedman, Boyd & Daniels.

Q. And do you remember who spoke to the U.S. Attorney?

A. I remember very well. We choreographed an entire presentation and started with an explanation of the historical origins of the use of plants as sacraments within religious context, and the history of plants as religious sacraments in every continent around the world. That was presented by Dr. Houston Smith, who is a very well-known scholar in the area.

Following that, we wanted to speak and introduce specifically about the use of ayhuasca and its—or the use of the plants that we use as a religious sacrament. We presented an anthropologist by the name of Dr. Marlene Olivas, who was studying the use of ayhuasca and tea similar among indigenous populations and forest peoples in the Amazon since 1961, and she spoke about its use for about 1500 years.

Following that, I believe we presented different [66] medical people who will be testifying in this hearing as well, Dr. Grob, Dr. Glacus, speaking about their own information and knowledge about the care that the UDV takes in relationship to its distribution of the tea, and the medical studies that have been done. And at the end I spoke to Mr. Gerson, as well.

MS. GOITEIN: Objection, Your Honor. The statements of these other people in the hearing are hearsay and the witness should not be allowed to use in this testimony today, the testimony of witnesses who are not here to make the testimony themselves.

MS. HOLLANDER: Your Honor, we are actually not offering that for the truth of the matter asserted.

Those witnesses will be—some of them will be testifying. I'm offering that to show what efforts he has made over this period of time.

THE COURT: I understand. All right. It's simply to explain the delay in filing suit.

MS. HOLLANDER: Yes, sir.

THE COURT: Okay. All right. Well, it's presented not as hearsay, not to prove the truth of the matter asserted, but simply to explain what he was doing instead of filing suit immediately.

MS. GOITEIN: To the extent that is he explaining that he had witnesses testify, I have no problem with that context of the witness's testimony to which I objected.

[67]

THE COURT: Okay.

Q. (By Ms. Hollander) You mentioned that you actually spoke. Did you speak about your involvement with the UDV at that time?

A. Openly and directly. Yes, I did.

Q. And did you admit that you had imported tea at that time?

A. Yes, I did.

Q. That was in September of 1999?

A. Correct.

Q. Did you also provide, do you remember, a notebook of information to the government?

A. Some of the graphs that we presented—provided to the Court today, and numerous other documents that were—we considered would be helpful in helping the

government to understand the nature of the dilemma that we were all involved in.

Q. And did the UDV—I know it originally had planned to be two days, and the government didn't have time for that. Did the UDV offer to reconvene at another time and have members testify?

A. We did.

Q. And what was the government's response?

A. The government's response initially was, "Well, we'll get back to you and see what we need," and then following [68] that, they convened a Grand Jury to conduct a more formal investigation of the UDV under the authority of the Grand Jury. And numerous UDV members were called in to testify in front of the Grand Jury, and agents from the government went to people's homes, former members, to try to elicit information from them, as well, and that lasted over many months.

Q. What was your understanding of what the government was going to do during this period of time?

A. My understanding that was they were going to be evaluating the sincerity of the UDV members in relationship to their practice of the religion, and they were going to be investigating the nature of our religious practices, to come to a greater understanding.

MS. GOITEIN: Objection, Your Honor. This appears to be based on hearsay, or at least there is no foundation for personal knowledge.

THE COURT: Well, you might develop the basis of his understanding, if you wish.

MS. HOLLANDER: I will withdraw the question, Your Honor.

Q. (By Ms. Hollander) How long did you wait to hear from the government?

A. I believe it was 18 months from the time we first —from the time of the seizure until the time we actually filed [69] our lawsuit.

Q. Did you ever get anything directly from the government regarding what they were or were not going to do as a result of the information that the UDV had provided?

A. We just heard that they were considering it and they were coming to a decision, but a decision never came.

Q. So why did you finally decide to file a lawsuit?

A. Because we believed that a decision might never come; that it might end up staying in the state of unresolved uncertainty, with us not being able to practice our religion indefinitely.

Q. Can you practice your religion without the sacramental tea?

A. No.

Q. Why not?

A. The Communion of the tea is the central element of every ritual. That is part of our religion. The teachings of our religion, the council of our religion, the spiritual force of our religion requires the sacramental Communion of the tea. Without it, we can't practice our religion.

Q. Well, have you been having meetings of the religious group?

A. We have.

Q. And why have you been doing that?

A. We have been doing that to stay united. You know, [70] the effect of people not being able to practice their religion is potentially devastating. And when I saw that, although I could no longer administer the sacrament of our faith, I was still responsible for the spiritual well-being of these 100 to 150 people that were seeking love and seeking understanding and peace through the UDV.

I wanted to provide them with something. So, we made a decision to stay together, to meet regularly for the social purposes of renewing our friendships, and to keep alive the memory of that which is so sacred and important to us. But what we are working with here is memory. We are not working with a living experience and communion with God that we have with our religion.

Q. Have any of the members gone to Brazil during these two years?

A. Anybody that has wanted to receive the Communion of the tea has had to go to Brazil. I'd say probably more than half of our members would have gone to Brazil.

Q. Why haven't the others?

A. Because they haven't been able to afford to, in some instances.

Q. As you know, it's your burden in this case to show the irreparable harm of the inability to practice your religion. Do you believe that you have been irreparably harmed?

[71]

A. Yes, I do.

Q. And why is that?

MS. GOITEIN: Objection, Your Honor.

THE COURT: Excuse me just a moment. Go ahead.

MS. GOITEIN: The focus of this particular hearing has been narrowed to three issues, and they do not include irreparable harm. So, my objection is based on relevance.

THE COURT: Well, does that mean that you're conceding irreparable harm for the purpose of the preliminary injunction hearing?

MS. GOITEIN: No, Your Honor. We are not. But we did not prepare to put on factual evidence about irreparable harm, because our understanding is that there were only three issues on which you wanted to hear evidence.

THE COURT: Oh, I see what you mean.

MS. HOLLANDER: Your Honor, I think we have to show irreparable harm. I think he is going to have to testify to that.

MS. GOITEIN: Your Honor, Counsel had an opportunity—Plaintiffs had an opportunity, through briefing, just as we had an opportunity through briefing. You determined on the basis of our briefs that there were three issues within the briefs that you would like to hear evidence about. And presumably, if you needed to hear evidence about irreparable harm, you would have asked. And had you asked, we would have [72] prepared for that.

THE COURT: Well, what do you need to do to prepare on that issue? If this is a preliminary injunction hearing, that is one of the elements that the Plaintiffs have to prove.

MS. GOITEIN: Honestly, Your Honor, at this point I can't tell you exactly what we need to do. I would have to think about that a little bit. My point is, I haven't been thinking about it. It isn't something that we intended to put on any evidence about at this hearing.

THE COURT: I will let him go ahead and answer the questions in this area, and then if you need additional time to counter it, I will consider that request.

MS. GOITEIN: Thank you, Your Honor.

MS. HOLLANDER: Your Honor, I think that the law presumes that if one can't practice one's religion, there is irreparable harm.

Q. (By Ms. Hollander) And I will ask Mr. Bronfman to tell me what it means to you in your life to practice this religion, and what it means to you in your life that have you not been able to practice your religion?

A. I will do my best. I want to clarify that here I am speaking both as an individual, in relationship to the personal experience I have had with this, and also as the representative of every member of the UDV in this country.

I am grateful to know that the law presumes that the [73] right to practice one's religion and the—any impediment to that right under the law constitutes irreparable harm, because it's very, very difficult to explain how profoundly harmed I personally feel by the position that the government has taken in relationship

to that which is central, sacred, and most important to me in my life.

The level of violation begins on my sense of my freedom as a human being in this society to be allowed—to be denied rights that I know are guaranteed by international conviction and recognition of the nations of this world: The right to freely exercise and manifest one's religious faith. And that in this country, there is a presumption that what I have done is perhaps criminal and illegal is deeply disturbing to me. It shakes me to the core, my foundation of who I am as a man and a citizen of this country, and then it goes deeper.

It goes down, for me, to the core of my spirit and my learning and my life on this earth to know God, to receive the light of God, to receive the love and the blessings of God; to feel that a country that was founded on the principles of freedom and liberty, and founded on principles of religious tolerance and freedom of religion.

The people who came here came here looking for a land where they would be free practice their religion, and that today, several hundred years later, that right has been rather disturbingly denied to me and the people who have found me, in [74] the same religion that I found. It is deeply disturbing to me, and I feel it —I didn't know how would I answer this question, and I was in a sense kind of nervous about answering it, because I was afraid that I would just bust into tears.

All I could say is that to the deepest core of my being, the interference of the government of the United States with my freedom to know and love the Creator of everything, has been obstructed and blocked, and that

has profoundly and irreparably harmed me in ways that I can hardly even begin explain.

It's on the level of my spirit, it's on the level of my soul, it's on the level of who I am as a human being in this world. I believe that we come on this earth for the purposes of knowing God; that all the other institutions that exist in the world today are there to serve a holy and sacred purpose. And I believe that in my instance, that right has been obstructed, interfered with and blocked by actions taken by agents of the government of this country. And I feel irreparably harmed by that.

MS. GOITEIN: Your Honor, I would object to the portions of the answer that drew legal conclusions about what is required by treaties and what is required by the law in this country with respect to irreparable harm and the practice of religion. These are beyond the competence of this particular witness.

* * * * *

[83]

MS. GOITEIN: It's not relevant to my hypothetical, Your Honor. We don't have the luxury of putting on our witnesses interspersed between their witnesses.

THE COURT: I am going to allow him to answer the question you have posed, and then Ms. Hollander can ask her version of it on redirect if she wishes. Go ahead.

A. As a representative of the UDV, if we gave our word as an institution that we would report it if an instance like that happened, we would follow the commitment that we made.

Q. (By MS. GOITEIN) You have talked about your willingness to make information available to the U.S.

Attorney's Office and to come forward with—offer information to the U.S. Attorney's Office about your church, correct?

A. That is correct.

Q. You weren't nearly so forthright prior to the shipment of hoasca being discovered by the government, were you?

A. The nature of the relationship that we sought to have with the government certainly changed after that event.

Q. Well, you were worried prior to that that there might be certain government agents who would cause trouble for you if they found out about your hoasca use; isn't that right?

A. I was concerned it could be misunderstood, and as a result of misunderstanding that a series of unfortunate events [84] could have occurred, and in fact, they did.

Q. And your response to that concern was to try to keep a low profile and to attract as little attention as possible; isn't that right?

A. That is correct.

Q. And the UDV was basically a secret society, wasn't it?

A. No.

Q. Could you look at what I've marked as Defendant's Exhibit Interval B.

A. Is that five times B?

Q. It's five times B. I apologize. It's somewhat awkward to do it this way.

MS. HOLLANDER: Five times B?

MS. GOITEIN: Yes.

Q. (By MS. GOITEIN) I'm sorry. Six times B. Could you identify this piece of writing for me?

A. I have to take a look at it for a moment.

Q. This is an E-mail that you sent, correct?

A. It appears to be, yes.

Q. And in the first paragraph you stated, "I feel it would be important for you to discuss what happened with UDV members attending the Diamond Session at Solstice Grove and the possible implications. Some people do not yet realize what confidentiality is and how careful we need to be. People [85] should not be talking publicly anywhere about our sessions, where we have them and who attends them." Is that what it says?

A. That is what that says.

Q. At what point the UDV in the U.S.A. was trying to grow the Mariri and Charona in this country; correct?

A. That is correct.

Q. You don't mention that in your declaration do you?

A. I think I responded to questions about it in my deposition, but I didn't mention it in my declaration, no.

Q. And to do this you had to bring in seeds and other plant material from Brazil?

A. Seeds and plant material, material from Brazil were brought in.

Q. You testified in your deposition that as an institution, the UDV didn't feel that you needed to hide the importation of these plants because you believed it was legal to import them; isn't that what have you testified to?

A. My understanding was that the plants were not controlled and that there was no issue with the importation of them.

Q. Could you please look at Exhibit Quadruple Z?

A. Quadruple—

Q. Quadruple Z. Four Z's?

A. Is this a letter to Dennis McKenna?

[86]

Q. I'm sorry. I apologize. I was talking about AAAAA.

A. AAAAA? Oh. I have that document in front of me.

Q. Can you identify this document?

THE COURT: UDV U.S.A. Plantation report, 1998.

MS. GOITEIN: Correct.

A. This was a report that was submitted to me by —at the time, Counselor Daniel Tucker, regarding the condition of the plants that had been brought into the country and were being cultivated here.

Q. And Daniel Tucker is a Plaintiff in this case, correct?

A. That is correct.

Q. Please look on page two, paragraph C.

A. All right.

Q. Could you read that paragraph to us, please?

A. "The legal situation regarding the importation of Charona and Mariri plants. To date, all the plants, seeds and leaves in our care have been brought into the U.S. clandestinely. In order for us to be able to import sufficient numbers of plants, the legal status and procedures need to be researched. Currently researching his right to bring these plants legally in our behalf."

Q. There was a redaction there so that last sentence is blank.

A. Okay.

[87]

Q. "Is currently researching his right to bring in these plants legally on our behalf."

A. That is correct.

MS. GOITEIN: I would like to move this into evidence please.

THE COURT: What exactly are you moving into evidence The entirety of Exhibit AAAAA?

MS. GOITEIN: Yes.

MS. HOLLANDER: No objection.

THE COURT: Okay. It's admitted

(Exhibit AAAAA is admitted.)

Q. (By MS. GOITEIN) Generally speaking, you respect the word of UDV members in corporation matters; is that right?

A. Yes, it's true.

Q. And you respect their word when they tell that you they stopped using drugs, correct?

A. That is true.

Q. And take you their word when they tell you that they stopped using alcohol, correct?

A. That is true, generally.

Q. But for the cultivation of plants in this country you required them to sign a confidentiality agreement; is that correct?

A. That is correct.

Q. Please look at Defendant's Exhibit 5B, which is —it * * *.

[90] represent the institution or its opinion.

MS. GOITEIN: Your Honor, I will not be offering it for the truth of the matter, but I would like to see if Mr. Bronfman agrees with a certain statement in the letter.

THE COURT: Okay.

Q. (By MS. GOITEIN) Begin reading from the bottom. The statement is, "The tea itself is not illegal, nor is it on any list in the United States. Therefore, it is important not to bring any unnecessary attention to it for as long as possible. But even though the tea is not illegal, ingredients in the tea are. If anyone entering the U.S. with the tea is questioned, the best answers would be that it is an herbal tea, a health tonic, and so on, with no mention made of any chemical contents."

"The fact that the tea may have certain chemicals is an undefined area of the law that has not been tested. As you know, our brains have the same con-

tents, but we should not discuss about this at all at the border."

MS. HOLLANDER: Your Honor ! am going to object. She is reading something that is hearsay. She is obviously trying to introduce it for the truth. It is not impeaching anything, because she hasn't asked him any question on which to be impeached, and he is not—it's not like a treatise that he can be asked if you relied on it. So I am going to object to it coming into the record at all.

[91]

THE COURT: Well, I am not sure what the—I don't think we have progressed to a question yet.

Q. (By MS. GOITEIN) My question was going to be that was apparently the policy that the UDV adopted, isn't it?

A. No, that is not correct.

Q. Well, I would like you to look for a moment at some of these shipping documents that we have been talking about in defendant's list of exhibits that is Exhibit AAAAAA.

These are the shipping documents that were produced to us from you. I understand from what you said that they may not be complete, but they are everything that we received. Could you please look at the first page and tell me how the tea is described?

A. "Herbal extract tea."

Q. And could you look at the second page and tell me how the tea is described?

A. "Herbal extract tea."

Q. And the next page?

A. "Herb tea, infusion of mixed herbs."

Q. And the next page?

A. "Herbal extract tea."

Q. And the next page?

A. "Herbal extract tea. File sanitary certificate. No commercial use."

Q. That is probably not a description of the actual [92] contents. And in fact, the only time on any of these documents that the tea was referred to as hoasca is when they were export documents that were being signed by the Brazilian UDV members; isn't that correct?

A. I believe that is true.

Q. And you believe that herbal tea is a complete and accurate description of what you were sending?

A. I think it's an accurate description for the purposes that it was being shipped, I think it was adequate.

Q. And plants that are infused with water and boiled in that way are a tea; is that right?

A. That's correct.

Q. So if you took marijuana plants and you boiled them in water that would be a tea; correct?

A. Presumably, yes.

Q. And that wouldn't be deceptive to put tea on a document if you were shipping marijuana tea; is that your opinion?

MS. HOLLANDER: Your Honor, I am going to object, because marijuana is a scheduled substance under Schedule I, and hoasca is not a scheduled substance under Schedule I, and that is a very big difference.

THE COURT: Well, that is an issue I need to decide at some point, the legal standpoint.

MS. HOLLANDER: I guess I should add, and none of * * *.

* * * * *

[119]

depth that I have now. That is correct.

Q. At least in the beginning people could come to the UDV just out of curiosity and drink whenever they felt like it; isn't that right?

A. No. Not whenever they felt like it. They could come to the UDV and drink at the time that there was a session offered, but people didn't drink whenever they felt like it.

Q. But they could come out of curiosity to these sessions, and were offered the tea, weren't they?

A. My understanding is that a number of people came out of curiosity at the very beginning, but times have changed.

Q. You have talked about the importance of having a highly trained mestre lead the sessions; correct?

A. I believe that is very important.

Q. And that is because the effect of the hoasca is highly dependent on the way in which the mestre conducts a session; isn't that right?

A. Yes, that is correct.

Q. And as we have discussed, there is at least in some context, potential for fragmentation of the psyche

for people who are trying hoasca without sufficient guidance?

A. I don't think that that would ever happen within the UDV, but I think that outside the UDV there is a risk.

Q. And that is why it's so important to have a trained mestre; correct?

[120]

A. That is correct. That is one of the reasons. The other reason is that the reason that we drink—we receive the communion of the tea within the UDV is for religious experience. And it takes somebody with skill and knowledge and a foundation to be able to use this tool in a way that it's meant to be used to help bring people closer to union with God.

Q. You personally attended a single instructive session before being given permission to distribute the tea in this country; isn't that right?

A. That is correct.

Q. And that session lasted for about four or five hours?

A. That one instructive session did, but I had numerous sessions prior to that session.

Q. But that was your one training session; correct?

A. No.

Q. The one instructive session?

A. No, that is not correct.

Q. At your deposition, page 61, I asked you, "How long did this initial training session last?" And you answered, "It was a four hour session, five hour

session." And I asked, "And that was the only instructive session you attended before you started holding ceremonies?" And you answered, "That is correct."

So it was the only instructive session that you [121] attended before you started holding ceremonies; correct?

A. There is a distinction between training and instructive session. I had—I came to the UDV in 1990. I was actively being trained from when I first associated in 1992. And that training involved observing many elements of the UDV ritual. Many of elements of the UDV religion. In order to be able to be called into the instructive body where I could receive additional training.

So I guess the misunderstanding you have is what I considered to be my training, it wasn't only my experience in that one instructive session. I had several years of experience in a number of different context that had allowed me to acquire knowledge within the UDV at a rate that was not necessarily the same rate that other people come to the UDV acquire it.

Q. There is no misunderstanding, Mr. Bronfman. I am aware that you had a good deal of experience in the UDV. My question was: You had only one instructive session prior to beginning to distribute the tea; is that correct?

MS. HOLLANDER: Your Honor, I'm going object unless she clarifies her terms. Is she using instructive session to mean a training session, or is she using it as the term of art in the UDV, instructive session, because I think otherwise it's unclear what she means.

MS. GOITEIN: I imagine that, Your Honor, having read * * *.

* * * * *

[127]

A. I am.

Q. You said have you always felt a responsibility for each cup of tea that you distribute; is that right?

A. Let me add to my last answer before we go onto that one.

I have only had one divorce since being involved in the UDV, and I was divorced twice from the same woman. So I think that is something that would be important for you to be aware of.

Q. I'm sorry. The question I just asked was, you said you always felt a tremendous responsibility for each cup of tea that you would distribute?

A. That is true.

Q. Before the hoasca project, though, you weren't even aware that hoasca contains dimethyltryptamine, were you?

A. That's correct.

Q. You still don't know the chemical concentration of dimethyltryptamine in any given batch of hoasca that you distribute?

A. That's correct.

Q. Nor do you know the concentration of any other chemicals in the hoasca that you distribute, do you?

A. We distribute the hoasca as a religious sacrament, not as a chemical concoction. So my interest in it is for the qualities that allow people to gain a greater

knowledge of [128] themselves and a greater sense of their place in the universe and their position on this earth, not what the chemical constituents of any glass of tea that I distribute is.

Q. You are presumably aware that the strength of the tea can vary significantly from batch to batch, correct?

A. I am aware of that, yes.

Q. And that the amounts of dimethyltryptamine in the Mariri can vary even during a given day. You're aware of that; correct?

A. Well, to my knowledge there is no dimethyltryptamine in the Mariri.

Q. I'm sorry. Charona. Did I get that one wrong? Sorry. In the Charona?

A. I have heard reports that at given times of day that there is different levels of concentration that have been studied. It's—to me, it's uncertain fact to me, but I have heard those reports.

Q. Now, there is no particular recipe for the tea, correct? There is no this many cups of this plant and this any pounds of this plant; is that right?

A. That is correct.

Q. Now, the mestre is supposed to try some of the hoasca after it has been prepared and before it has been distributed to the disciples; is that right?

A. That is the general practice in Brazil where [129] everybody works together in the preparation of the tea, and then the direction of the nucleo, before it's distributed at a scheduled session, will often drink to

determine the degree of the tea and become familiar with it.

Q. And the purpose is to see what the effect of the tea is, correct ?

A. There are several purposes. I think it's to—we are going to be distributing the tea as a religious sacrament. We need to know the different qualities and characteristics of the tea so we have an idea of the appropriate amount to give people and how to work with it.

Q. Isn't it true that the same amount of the same batch of hoasca can produce a different effect on different occasions?

A. That is correct.

Q. The mestre doesn't have to try every batch multiple times before serving it to the disciples, does he?

A. That is correct.

Q. And there have been occasions; that you have distributed tea before you have tested, it, correct?

A. Personally tested it? That is correct, but on those occasions I would have had conversations with the mestres in Brazil who prepared it, to understand the particular characteristics of the tea.

Q. You give different amounts of tea to different [130] disciples; is that right?

A. That is true.

Q. And the amount that you would give depends on factors like the person's age, their amount of experience, their need, the purpose of the session, things like that, correct?

A. That is correct.

Q. There is no formula there, it's just an intuitive judgement on your part, correct?

A. That is correct.

Q. And based on your intuition, the amount you give can range anywhere from 50 to 200 milligrams; is that right?

A. Well, not for a given person. I mean for a given person it might vary between 50 and 55 milliliters, but over the range of all the disciples who I know intimately, that would be a reasonable range of the amount that I would give. But to a given person the amount that I give doesn't vary all that much.

Q. And you are not measuring it out, you're just eyeballing it?

A. That is correct.

Q. And then you may give people a second dose later on in the session, correct?

A. That is correct.

Q. That can happen right up to two hours before the end of the session, correct?

[131]

A. That is correct.

Q. If somebody asks for a second dose up to that time, you usually give it to them, right?

A. Usually, yes.

Q. You have distributed hoasca to children under the age of 18, haven't you?

A. That is correct.

Q. And you regularly distribute hoasca to pregnant women, correct? Or you did, prior to 1999?

A. When women became pregnant, it's a common practice for the UDV to continue to receive the holy sacrament of communion.

Q. When you personally drink hoasca, you do not see any visual images with your eyes open that you wouldn't be seeing if it weren't for the hoasca; is that accurate?

A. That's my personal experience, yes.

Q. But you do see visual images with your eyes closed that go away when you open them?

A. I have had experience where, in meditation, there is light, there is a illumination, a presence, of things that I see with my eyes closed, and they disappear with my eyes open.

Q. And you are aware of people in the UDV who have seen things with their eyes open that they would not have seen without the hoasca; is that right?

A. I have heard people tell me that, yes.

[132]

Q. You personally observed people that have experienced anxiety while under the influence of the tea, correct?

A. That's correct.

Q. You have observed people who have become frightened, correct?

A. That is correct. Or who appear to have been frightened.

Q. And have you observed people crying?

A. That is correct.

Q. And you're not trained to distinguish between anxiety or fear that is nonclinical in nature and the onset of a psychotic episode, are you?

A. I am observing it within the context of my work as a religious and spiritual authority, not as a medical or scientific or psychiatric or psychiatrist.

Q. So the answer to my question is no?

A. I have not been trained in that way, no.

Q. You were not required to meet with the medical scientific department of the UDV prior to beginning your distribution of the tea, were you?

A. Prior to beginning the distribution of the tea in this country, you mean?

Q. Yes.

A. No, I was not. Again, the authority by which I was distributing the tea was religious authority, not medical [133] authority.

Q. People who are less experienced with the tea may have difficulty in walking or standing up, as we have already heard, correct?

A. That is correct.

Q. And they may also have difficulty forming their thoughts into words, correct?

A. I think that is uncommon. I think that most people who have—I mean in all the sessions where I have given tea to people for the first time, I have conversed with all of them, and none of them have shown any difficulty putting their thoughts into words in the sessions that I have directed.

As a theoretical thing, I imagine that there's some people, but it's probably rare. It's very rare.

Q. In your deposition, page 204, I asked you, "In what ways have you seen people acting not normally under the influence of the tea?" What I asked was, "Have you seen people acted not normally?"

You answered, "People who felt that they would have difficulty walking, difficulty standing up; people who perhaps would be, you know, nauseous or kind of queasy on their feet; people perhaps who had a difficult time formulating their thoughts into words." Is that what you said?

A. Yes, that's what I said.

Q. Which means that if they were thinking, "I'm scared. [134] I need help," they might have trouble forming this thought into words.

A. I didn't say that, no.

Q. Is that not a logical extension of what you did say?

A. I can see how you want to make it one, but that is not what I said. The experiences that I have had where people, as I already testified, people are lucid and are able to talk about what it is they are feeling, what it is they are experiencing. It is very, very rare that somebody can't articulate a concern that they are having.

Q. But you have seen that happen, correct? You have seen people who have had difficulty formulating their thoughts into words?

A. I have seen that happen, yes.

Q. You have said that the mestres keep a close eye on the new members, you said that today?

A. That is correct.

Q. And that you're generally aware of everything that is going on in the session?

A. Well, I don't know everything, but I try to be aware of most of what is going on in the session.

Q. It's probably not worth going to your deposition, but you did actually say in your deposition that you were aware everything that is going on.

A. Probably a little presumptuous of me at that moment.

[135]

Q. And if anyone were having an adverse reaction to the hoasca, you would notice?

A. That I would be aware of.

Q. Now, the mestres in the session are all drinking hoasca themselves, correct?

A. That's correct.

Q. There isn't anyone in a session responsible for keeping an eye on the new members who is not himself or herself ingesting hoasca, correct?

A. That is correct.

Q. You often have several people assisting you in a session, correct?

A. That is correct.

Q. But not always?

A. There have been times where I have not had people who were of the degree where they could be of much assistance to me, but usually, yes.

Q. But there have been times when you have conducted sessions of up to 20 disciples without any assistance, correct?

A. Perhaps in the early years, that is correct.

Q. Hoasca has the effect of drawing a person inward into a spiritual and meditative state; is that right?

A. I think that is accurate.

Q. And in that state, one wants to just concentrate * * *.

* * * * *

[147] don't see in the same way, now. I think there is some interest, but I don't see it as tremendous.

Q. But at the time you saw it as a tremendous interest?

A. At the time I did.

Q. You believe that because of the great interest in ayahuasca and the financial rewards involved in having a supply to distribute, that there were many psychologists who were looking for a source of vegetal that they could distribute; is that right?

A. At the time I wrote that I believed that, that is correct.

Q. And you believe that some had, in fact, found such a source in the brother of the person who headed up the hoasca project, correct?

A. There was one lead scientist in the hoasca project. I wouldn't say he was the person who headed

it up, but he was one of the persons involved in the project, who was Dennis McKenna. His brother, who is now deceased had, to my knowledge, had played a part in distributing ayahuasca to some people. And I was aware of some people who were using it at that time in ways that would not be considered to have been responsible within the community.

Q. And there were people who were willing to pay between $200 and $450 for a single glass of the vegetal; is that right?

[148]

A. Of the vegetal, no. Because they wouldn't be able to—what you consider the vegetal as the sacrament of the UDV, no, but ayahuasca preparations, it was my understanding that at that time there were people who were selling tea that was made from the plants that our sacrament is made from, and conducting the works that they were commercializing it.

Q. If you could, please look at Exhibit LLLLL. This appears to be a letter that you wrote to Mestre Glacus; is that correct?

A. That is correct.

Q. And on the second page, on the bottom paragraph, you state, or you stated, "People in the United States and Europe are willing to pay between $200 and $450 for a glass of vegetal. I know a man who gets vegetal from Peru and conducts groups of about 20 people every Saturday night. He makes about $5,000 per group."

A. That is correct. This again, to kind of put it in context, I was writing to Mestre Glacus, who I know understands the vocabulary that I am using, I know he

understands what I mean. So when I was writing about the vegetal, I was writing about substances similar to the tea that we use as our religious sacrament, and I know that he knew that people were not acquiring the religious sacrament of the UDV and abusing it that way.

Q. And you know another woman who has designated herself * * *.

* * * * *

[149] a mestre and is selling sessions for $300 an experience, correct?

A. That was several years ago. I don't know if that is currently going on.

Q. The UDV has on occasion charged a per session fee attending, haven't they?

A. When I became aware that that had happened, I immediately stopped it. But I was aware that at one point, in one of the areas of this country, that that had taken place.

Q. Your concern that some of the hoasca used by Santo Diame, or the Diame they prefer to call it that way, used by the Santo Diame Church, could be going to people who are not members of the church; isn't that right?

A. I was concerned about that, yes.

Q. You're aware of other cases in this country in which ayahuasca or the plants comprising them have been seized?

A. I am aware of that, yes.

Q. Including a case where you don't know of any connection to the UDV or Santo Diame or any other religious group, correct?

A. That is correct.

Q. And there is the general phenomena of a search for the plants that can make a brew with similar properties to the vegetal, isn't there?

A. I don't know how large that is, but I think there is * * *.

* * * * *

[159] the hoasca project; isn't that right?

A. That's correct.

Q. And today you described that study as a study commissioned by the UDV. Isn't that how you described it today?

A. No. Actually I think that that's—I think the more accurate would be to say that it was a study that the UDV was interested in and facilitated it taking place, but the initial interest in the study was brought by people outside the UDV to the UDV's attention, and then it was commissioned by the UDV.

Q. At some point it was commissioned by the UDV. That is what you said earlier; is that correct?

A. I am trying to make sure that you are not ascribing a meaning to my word "commission" that I didn't intend.

Q. The original conversations about doing the project took place at your house, correct?

A. One of them did. Others occurred in other places.

Q. And you wrote a letter to Dennis McKenna in which you offered to provide the initial funding for the hoasca project?

A. I said that I would help, that is correct.

Q. And you said that would you like to provide the initial funding; isn't that what you said?

A. Correct. I thought it was; valuable, important work.

Q. And some of the funding that you provided was channeled through the organization, Botanical Dimensions?

[160]

A. That is correct.

Q. And you had also contributed some funding to the Heffter Institute; is that right?

A. I have indeed. That is correct.

Q. You serve on an advisory board to the Heffter Institute?

A. In name. They actually heave never asked me to do anything, but yes, I serve on an advisory board.

Q. And both Dr. Grob and Dr. Nichols are members of the Heffter Institute, correct?

A. I don't know what their official title is. I believe they are associates.

Q. And there is a synergistic and even affectionate relationship between the UDV and the Heffter Institute, isn't there?

A. Yes, there is.

Q. You are currently providing about $45,000 in funding for another study that Dr. Grob is doing; is that right?

A. That is correct.

Q. You would agree that there are legitimate, compelling concerns that the government would have in relation to the religious use of psychotropic substances, wouldn't you?

A. I think that there—in terms of determining whether it was a legitimate or illegitimate, the government would have some very, very compelling concerns, that is correct. But in * * *.

* * * * *

[164]

MS. GOITEIN: HHHHHH, the session records.

THE COURT: These are what now?

MS. GOITEIN: Session records. They are partial session records.

MS. HOLLANDER: No objection that they are partial session records.

THE COURT: All right. Okay. HHHHHH is admitted

(Exhibit HHHHHH is admitted.)

MS. GOITEIN: LLLLL, letter from Jeffrey Bronfman to Mr. Glacus.

MS. HOLLANDER: No objection.

THE COURT: Okay. LLLLL is admitted

(Exhibit LLLLL is admitted.)

MS. GOITEIN: And PPPPP, letters from Bronfman to customs agents.

MS. HOLLANDER: No objection.

THE COURT: PPPPP admitted without objection.

(Exhibit PPPPP is admitted.)

THE COURT: Does that complete your cross-examination?

MS. GOITEIN: Yes it does, Your Honor.

THE COURT: We will be in recess for about 15 minutes.

(A brief recess was taken.)

THE COURT: Okay. Court is in session. Be seated, please. Let me ask Ms. Goitein, for the purpose of this [165] hearing, the government still adheres to its position that you don't contest the fact that the restrictions on the use of hoasca tea would substantially interfere with the private practice of a religion; is that correct?

MS. GOITEIN: Correct, Your Honor. For the purpose of this hearing, we are not contesting that.

THE COURT: Okay. Is there any need to develop at this hearing the core beliefs of the religion and that type of thing?

MS. GOITEIN: I don't see any need for that, Your Honor.

THE COURT: Okay. All right. Go ahead, Ms. Hollander.

MS. HOLLANDER: Thank you, Your Honor. In the interest of saving time, and also because you have

the depositions, I would normally ask Mr. Bronfman on redirect to state the whole answers that he gave on pages 110 and 113, but I would just direct the Court to the complete answers because he was only directed to partial answers on 110 and 113.

THE COURT: 110 and 113?

MS. HOLLANDER: Yes, sir.

THE COURT: Okay. Before you get started with the redirect examination, let me advise everyone that we will be using the main courtroom at the courthouse in Santa Fe in the morning. We will begin at 10:00 o'clock in the morning, and * * *.

* * * * *

[168]

He came up with it and brought it to the attention of the president and the authority within the UDV and asked if UDV would be willing to cooperate on this large-scale study.

Q. You were also asked about a confidentiality agreement, and it's the Government's Exhibit 5B?

A. I remember.

Q. And I think you said that was a draft, you're not sure if that was the final one, correct?

A. That is correct.

Q. Why was that confidentiality agreement created?

A. I think I testified about this at length in my deposition, but it was out of concern that—well, first of all, the right to grow plants within the UDV is, in Brazil, it doesn't happen outside of the—generally,

outside of the controlled structures within the temples or within the nucleos, and so we were setting precedents here of having individuals take responsibility for growing plants that we considered to be sacred, and a very, very serious responsibility.

So to impress upon the people who were going to be taking on this responsibility, we created this agreement where they would have to—it wasn't enough that they said that they understood. We really wanted to impress upon them the seriousness and the importance. The issue of confidentiality had to do with the fact that we were concerned that there were [169] people outside of the UDV who, with the knowledge that we were cultivating these plants, might have designs on them, and, so we wanted to keep this as discrete and as low key as possible.

Q. Is part of the interest to prevent diversion?

A. Clearly. I mean we use—

MS. GOITEIN: Objection, Your Honor. Leading.

A. I mean, there are—

THE COURT: Well, let me explain this about leading questions. I will give both sides some latitude on that since this is a non-jury trial.

MS. HOLLANDER: I'll try to be more careful, Your Honor.

THE COURT: It's all right. Go ahead.

A. When I talked about people having designs on the plants, it was because I was concerned that people might want to take the plants that we were cultivating for our religious purposes and use them for purposes that would be considered to be improper or incorrect, or

abusing something which was sacred and important to us. So in that sense, yes, it was clearly within the context of diversion that we were trying to control every plant that we were cultivating in this country.

Q. And were you ever able to cultivate any?

A. Unfortunately, no. We got some little sprouts of things that are growing, but nothing that would be—that at this point we could use to prepare the tea.

[170]

Q. You also were asked a number of questions about the shipping documents and how you described the tea as medicinal tea or having health benefits, but you weren't asked what your definition of health is. What is your definition of health? What kind of health did you mean?

A. In that sense we were talking about the mental, physical and spiritual health of the members. So I was talking about health in the broadest definition, which had to do with spiritual well-being, as well as, you know, physical health.

Q. You were also asked a series of questions about if an American looked in a dictionary for the word vegetal, they would find the word vegetable, and would an American know necessarily that vegetal meant the sacramental tea to the UDV.

My question is, if an American DEA agent asked a Brazilian drug agent from the CONFEN, which used to be the drug agency or the CONAD, which is now the drug agency, would that Brazilian drug agency, do you believe, know what vegetal is?

A. They would certainly know. It was part of the definition of what substances were being protected for

religious use in Brazil. The term vegetal was among the list of substances that were identified.

Q. You also referred to a letter you wrote, and it's Government's KKKK, it's a letter you wrote to a Mr. Ott. Who [171] is Mr. Ott?

A. Jonathan Ott is an individual who has written a book about ayahuasca.

Q. Do you know what his—answer this if you know from personal knowledge, do you know whether he has any educational background in the field of chemistry or botany or anything else?

A. I don't believe he has any formal academic training in those areas.

MS. GOITEIN: Objection, Your Honor. We need to have some kind of foundation whether this is personal knowledge about Jonathan Ott's background.

Q. (By Ms. Hollander) What is the foundation for your knowledge?

THE COURT: Knowledge about his lack of education, is what you're saying?

MS. GOITEIN: Yes, Your Honor.

THE COURT: You might ask him what his understanding is.

MS. HOLLANDER: I will.

Q. (By Ms. Hollander) What is the basis of your knowledge?

A. I believe that this topic came up in depositions that we were holding, and it was information that I learned about over the course of listening to the deposition that were being [172] held.

MS. GOITEIN: I am going to object on the grounds of hearsay, Your Honor.

THE COURT: Well, just a moment. He will testify, will he not?

MS. HOLLANDER: Mr. Ott?

THE COURT: Yes.

MS. HOLLANDER: No, sir.

THE COURT: He won't?

MS. HOLLANDER: No, but there will be testimony about him, about people who do have personal knowledge about his background.

MS. GOITEIN: Then, Your Honor, I would suggest that those people testify about his personal background and not Mr. Bronfman. He is testifying on the basis of hearsay.

THE COURT: Okay. Go ahead.

Q. (By Ms. Hollander) Do you have any particular reason to be concerned about—in other words, you wrote a letter to Mr. Ott. Why were you concerned enough to write a letter to him?

A. I was concerned that he had published a book to which he was claiming that people on their own could combine different kinds of plants together and have an experience or use it in a way that would provide an experience that was—I consider to be irresponsible and I consider to be careless and [173] I consider to be naive, and it worried me. That is why I wrote that letter.

Q. And do you believe this is the same Mr. Ott who sources were cited by Dr. Genser, the government's witness, in his expert report?

A. I believe it's the same individual, yes.

Q. There seems to be—judging from your answers to Ms. Goitein, somewhat of a fine line between rules and recommendations in the UDV. To your knowledge, do the mestres follow the recommendations of DEMEC?

A. Yes, they do.

Q. Why do you believe that to be true?

A. Because the authorities within DEMEC are not only medical doctors or psychiatrists, they are also mestres within the UDV. And the institution was created by the authorities of the high spiritual council within the UDV, and its leadership are all respected members within our church.

Q. Do you have any idea how many medical doctors are mestres in the UDV?

A. I don't know. I believe Dr. Glacus is. There are two in the United States, three in the United States.

Q. Three mestres?

A. No. There are three medical doctors in the United States who are members of the UDV.

Q. Have you ever been at a Native American Church [174] session, or do you have any personal knowledge of anyone who has gone to a session who had not yet joined the church?

A. I was an example of that. I am sure it happens quite a bit.

Q. Have you ever, to your personal knowledge, known of anyone who went to a ceremony out of curiosity?

A. I do have personal knowledge of people who have, yes.

Q. In your opinion, is there a potential for harm for people to use mescaline outside the Native American Church?

A. I believe there is, yes.

MS. GOITEIN: Objection, Your Honor. There is no foundation for this witness to testify about the health effects of mescaline.

MS. HOLLANDER: Well, I think inasmuch as—she asked the question, Your Honor, about—

THE COURT: Well, there is not much point in arguing about it before me. Again, let me stress that this is not a jury trial, but if you want to lay a foundation to further explain the basis of his knowledge, you may do that.

Q. (By Ms. Hollander) You discussed a reason why Dr. Lenderts was suspended for a period of time from the instructive body?

A. That is correct.

Q. Can you tell us what some of the other reasons are that members, disciples or members of the instructive body [175] would be suspended, either from the Communion of the tea or just from the instructive body? What kinds of reasons might those be?

A. If they were found to have been behaving dishonestly, that could be a reason. If they behaved in ways that were considered to be prejudicial to the interest of the institution, that could be a reason. If they used their words in a way to offend or harm another member, that could be considered a reason. If

somebody was known to be using illegal substances, that would be a reason. And if there were people who behaving in ways that were considered contrary to the morality and the dignity of the center, that could be a reason, as well.

Q. What would be contrary to the morality and the dignity of the center?

A. There was one instance where there was an individual who had been involved with a woman. She had become pregnant, rather than fulfilling the responsibilities of parenthood, which is considered a sublime mission within the UDV, they made the decision together to have an abortion. They were members of the instructive body, and it was considered that this was—for people who were in that station within the UDV, it was an inappropriate form of birth control for people to be employing, so they were removed from the instructive body for a period of time.

[176]

Q. When the UDV has a preparo, you said there is not a recipe, but is there any way that the mestres know how much of one plant or how much of another plant? You don't have to say exactly what the quantities are, but is there any guidance?

A. Yes, there is clearly guidance. There's, you know, within a range an amount, a certain amount of the vine is used, a certain amount of the leaf is used, and there is—the amount of plant material that is used is in proportion. So it really doesn't vary all that much from one to the other.

In response to Ms. Goitein's questions, I was only saying that there isn't a precise measure in terms

kilograms or, you know, there aren't weighted amounts that are put into the pots.

Q. And you have also been asked about people having a second drink of the tea. When does that happen?

A. It can happen at their request during the session. And the mestre, at his criteria, could give the second amount until 10:00 in the evening.

Q. Is the second amount the same amount as the first amount?

A. It's usually less.

Q. In your experience, how many people at a given session would request a second amount?

A. It depends on the session. Sometimes, you know, [177] nobody will. Sometimes one will. Sometimes two will. I have been in sessions where maybe ten people have, out of 200 present. It's not all that common.

Q. What if it was someone who was drinking the tea for the first or second time. Do you think that person would get a second dose?

A. I think it's important for somebody who is coming, to know what the religion is about and to experience the effect. So if somebody had, perhaps, you know, drank the tea and had not felt the effect yet, there might be circumstances where it would be another, you know, small amount would be given, or they might be told to just wait a little bit and to let more time pass before the effect could be felt. It depends on the judgement of the directing mestre.

Q. You were also asked about whether you had seen people who had shown anxiety. Have you ever seen people show anxiety in other situations, when they aren't drinking the tea?

A. Of course.

Q. Have you seen people frightened?

A. Of course.

Q. Crying?

A. Of course.

Q. In your sessions at the Native American Church—

A. They call them meetings.

Q. Meetings? In your Native American Church meetings, [178] to your knowledge does the government prohibit children from partaking?

A. From what I have observed, no.

MS. GOITEIN: Objection, Your Honor. The foundation for the practices of the government potentially calls for a legal conclusion.

MS. HOLLANDER: Well, I think it's just based on his personal knowledge, Your Honor.

THE COURT: Well, I understood his answer to be his personal observation, as opposed to what official government policy may be.

MS. GOITEIN: As long as it's understood that the government policy may be different from what he observed, that's fine.

MS. HOLLANDER: Well, if there is a government policy, we'd certainly like to know what it is.

THE COURT: If he is knowledgeable about the government policy, he can testify to that. Does he have a basis for doing that?

MS. HOLLANDER: No. He doesn't know of any government policy, nor do I.

Q. (By Ms. Hollander) Are you aware of any government policy that prohibits pregnant women from being involved in Native American Church meetings?

A. I have observed both children and pregnant women in [179] Native American Church ceremonies, and to my knowledge there is no government policy that restricts that.

Q. Have you ever seen people in Native American Church meetings who were frightened?

A. I have seen that, yes.

Q. Have you seen them crying?

A. I have seen people crying in the Native American Church meetings, yes.

Q. Have you ever seen anyone have difficulty walking after ingesting peyote?

A. I have seen that, yes.

Q. To your knowledge, does the government require the Native American Church to screen people before they are allowed to ingest peyote?

A. To my knowledge, there is no screening process that is employed within the Native American Church.

MS. GOITEIN: Again, Your Honor, I have to object. Whether he knows or not about a government policy is fairly meaningless unless there is any foundation for how would he know about the policy. He is

clearly implying that there is no policy, and there is no foundation for that testimony.

THE COURT: Well, underlying this is there a relevance objection, or what is it?

MS. GOITEIN: It's a personal knowledge objection or foundation objection.

[180]

MS. HOLLANDER: Well, Your Honor, this goes directly to issues in this case, and if there is such a government requirement, I think that we would have been entitled to know about it, frankly. And so, I think that Ms. Goitein's objections are not well taken.

MS. GOITEIN: I didn't expect them to be well taken by present counsel, Your Honor.

THE COURT: The witness has testified that he doesn't know of a governmental policy on certain issues. The objection is that there is no basis for his expressing the opinion that he doesn't know. I am somewhat in a quandary about this.

MS. GOITEIN: Your Honor, sorry. I was objecting to the explicit and then implicit question that was being asked, which was what was the government policy.

MS. HOLLANDER: All we are trying to get at, Your Honor, is that there is a clear inference here, if he has seen these things happen, that there is no government policy prohibiting it. And I think that the court can do what it wishes with that inference.

THE COURT: It's not helping me a whole lot. For example, I am sure there are a lot of witnesses to illegal drug transactions, probably within five blocks of

this courthouse, but that doesn't mean that there is not a government policy that restricts that. So I am not sure how [181] this is helpful to me.

MS. GOITEIN: And, Your Honor, my point is simply that, which is I have no problem with the witness testifying about what he has seen. My problem is with this so-called inference.

THE COURT: All right. Let's go on.

Q. (By Ms. Hollander) In the course of your meetings with the NAC, are you aware of any requirement that there be someone there, any requirement from the government or anywhere else, that there be someone who is not ingesting peyote during the time of the meetings?

A. Is not, to my understanding, a common practice within the Native American Church for someone not ingesting peyote to be part of the meeting. It's considered the holy sacrament of the church, and people who come to the church take Communion of the peyote. There is no person who is a member of the church that doesn't take the Communion. That is the reason why them come to church.

Q. If you were given your choice whether to drink alcohol and drive or drink the hoasca and drive, which would you rather do?

A. I think there is far greater danger of somebody being drunk on alcohol, and the consequences of their driving a car, than an experienced member of the UDV under condition of necessity having to drive a car, if they were under the affect [182] of the tea.

Q. You were also asked about some activities of someone named Terrance McKenna.

* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CV-00-1647 JP/RLP

O CENTRO ESPIRITA BENEFICIENTE
UNIAO DO VEGETAL, ET AL., PLAINTIFFS

vs.

JOHN ASHCROFT, ET AL., DEFENDANTS

TRANSCRIPT OF PROCEEDINGS

Motion Hearing
Oct. 23, 2001

BEFORE: THE HONORABLE JAMES A. PARKER
United States District Judge

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[207]

THE COURT: Good morning. Court is in session. Have a seat, please. Okay. Let's see, are we ready to resume the testimony?

MS. HOLLANDER: We are, Your Honor.

THE COURT: Okay. Go ahead, Ms. Hollander.

MS. HOLLANDER: Your Honor, Dr. Grob asked me to tell you that if he swivels and puts his leg out, it's because he has a bad knee and it doesn't quite work.

THE COURT: Okay. That is not a problem.

CHARLES STEPHEN GROB, MD

having been previously duly sworn, under oath, testified as follows:

DIRECT EXAMINATION (Cont.)

BY MS. HOLLANDER:

Q. Dr. Grob, I asked you a question towards the end of yesterday, and I am afraid I asked it in a confusing manner. I am not sure of my record. So I need to ask it again, and then we are going to move into a different area.

Does evidence exist, to a reasonable degree of scientific certainty, to form the opinion that the use of hoasca as a sacrament within the UDV presents any significant health risk?

[208]

A. No.

Q. Did you intend that to be your answer when I asked it in my question?

A. Oh, yes.

Q. Okay. Now, let me move to another topic. Would you agree that there is some health risk with people taking hoasca in the sacramental setting? Is there some health risk?

A. Yes.

Q. And what is that risk?

A. Well, one particular risk has to do with interactions with medication, which we have published on.

Q. Let's leave that, because I want to get back to that.

A. Uh-huh.

Q. One of the issues that, as you know, the government has raised is that some people perhaps who use hoasca in sacramental settings in the UDV—and that is really all we're concerned about—may develop a psychosis. Now, let me start by asking you, so we are clear: How would you define the word psychosis?

A. I would define psychosis as impaired reality testing.

[209]

Q. Can it be transient or long term?

A. Yes, yes.

Q. And when people mention psychosis, how do you know whether they are talking about transient or long term?

A. Well, they need to qualify that, and there is often some confusion as to what is implied.

Q. And what is schizophrenia?

A. Schizophrenia is a chronic, persistent impairment of reality testing and disorganization of mental function.

Q. Now, do you know what percentage of people have schizophrenia?

A. In the general population, it's 1 percent, approximately.

Q. Is that everywhere in the world?

A. Pretty much. Pretty much.

Q. And talking about psychosis, are there other things that can trigger a psychosis? Well, what kinds of events can trigger a transient psychosis?

A. Well, certainly there are medications, prescription medications and over-the-counter medications, which can precipitate a psychotic experience.

[210]

Q. Specifically what medications, what kinds of medications?

A. Well, antidepressants given to an individual who is predisposed to, let's say manic depressive illness or bipolar disorder and who is not also being treated with mood stabilizers or neuroleptic medication, there is some risk of the induction of a manic psychotic event. This is well known in psychiatry.

Q. Do you see it in practice?

A. Yes, we see it.

Q. And that—even though these drugs have been through clinical trials and are considered safe, they can still cause a psychotic reaction?

A. Yes. It's a well-known risk if an accurate diagnosis has not been made and the appropriate medication has not been prescribed.

Q. And you said over-the-counter medications. What are you referring to?

A. Well, for instance, commonly used cold medications often have substances which can, in vulnerable individuals, precipitate aberrant mental phenomenon.

Q. What ones in particular?

A. Oh, some over-the-counter cold medications [211] contain dextromethorphan. Some over-the-counter cold medications contain a variety of stimulant medications like chlorpheniramine or phenylpropanolamine, pseudoephedrine, also antihistamines—but the panoply and the mix can in a vulnerable individual, particularly an individual who takes a rather large amount, can induce, again, aberrant mental phenomenon.

Q. Do you see this? Do psychiatrists see this?

A. On occasion, you will see that, sure.

Q. Are there any of these over-the-counter medications that would be familiar to us by trade name?

A. Oh, I mean, you know, the Robitussin, the Robitussin—some of the Robitussin meds contain some very powerful psychoactive drugs.

Q. What about Nyquil, does it contain dextromethorphan?

A. Yes, Nyquil, as well.

Q. And you have mentioned antihistamine. These are things that anyone can buy in a drugstore?

A. Yes.

Q. And have you seen this either personally or in the literature?

[212]

A. Sure. You will see this in clinical practice, of course.

Q. Have you seen it?

A. Yes.

Q. Now, you said, "In vulnerable individuals." What do you mean by, "Vulnerable individuals"?

A. Well, individuals whose mental function is already unstable, individuals who already in their lives have experienced episodes of aberrant mental function and who have experienced periods in their lives of, for instance, serious depression or manic depressive illness or earlier psychotic events. These may be individuals with very strong family histories. These may be individuals also who are experiencing serious stressors in their lives at the time that the event occurred. They would be more vulnerable.

Q. Well, can a stressor itself cause a transient psychotic episode, for example, if someone has a marriage break up?

A. Yes, sure. Individuals who are vulnerable for serious psychopathology in a setting of heightened stress can undergo the onset of a serious, you know, psychiatric disorder within that [213] context.

Q. Can this occur as a result of losing a job or—

A. Yes. Yeah, a loss would be a serious stressor, loss of a job, loss of a relationship, loss of a close family member.

Q. Have you ever seen this in your experience?

A. Sure, you see this all the time. When you do a psychiatric evaluation, you're always looking to determine what are the short-term and the long-term stressors that the individual is going through.

Q. What about a movie? Can something as simple as someone goes to a movie, can that cause a psychotic episode?

A. In a very vulnerable individual, I have seen cases.

Q. Have you seen specific cases?

A. Oh, absolutely, absolutely.

Q. Do you remember anything about any of these cases?

A. Sure. I can tell you about a teenage boy that I treated when I was at Johns Hopkins who experienced the onset of his schizophrenic illness after watching a made-for-television movie about a [214] teenage boy who was obsessed with killing his mother.

He, for that—he was a very vulnerable young man, but still functional up to that point. After that point, he became obsessive about the content of that movie and started to identify with the boy in the movie. And in fact, when you would talk with him, he would often tell you he was not who he was but he was, Bobby, the character in the movie. He became very, very much preoccupied, and his preoccupation with that movie, I think, had a lot to do with the—you know, the immediate decomposition.

Q. What about alcohol? Can alcohol cause a psychotic event?

A. Oh, of course. Alcohol can cause a tremendous array of very serious mental disturbance, both acute and chronic.

Q. And what about peyote, can it cause a psychotic episode?

A. I imagine it can, even within the context of the Native American Church, which I think has an excellent record of helping seriously dysfunctional individuals regain mental equilibrium and become more responsible and function in family and [215] community. Even in that context, peyote can induce a psychotic event, sure.

MS. GOITEIN: Objection, Your Honor. We have had no foundation for this witness to testify about the effect of peyote in the Native American Church on the members of that church.

THE COURT: Okay. Do you want to lay a foundation of his knowledge about that?

Q. (By Ms. Hollander) What do you consider your field of expertise in psychiatry?

A. Well, I could say one area is—as I said yesterday, I am a child and adolescent psychiatrist. I am director of a very large division and training program and clinical service. Also I have written and researched on the topic of hallucinogens, and I have written in the area of substance abuse.

Q. Is peyote considered one of the hallucinogens?

A. Of course.

Q. Is it one of the—and its active ingredient is mescaline?

A. Yes, yes.

Q. Is mescaline one of the drugs or substances that you have studied as a hallucinogen?

A. Well, I have not done actual research, but [216] I have certainly—it's certainly within the realm of my very active interest, and some of my writing has been on mescaline and peyote and the Native American Church.

Q. And when people write about these hallucinogens, for example, the chapter by Dr. Ungerleider that Dr. Genser reports about, and they talk about the hallucinogens, are they talking about a group that you can identify?

A. Yes.

Q. And what is that group? What does it consist of, and why are they put together?

A. Well, you know, Dr. Ungerleider, in his general chapter, included drugs such as LSD, psilocybin, mescaline, dimethyltryptamine.

Q. What is similar about those?

A. Well, there is a similar chemical structure, and there is also a similar range of effect that it has on individuals. And many of these substances that have plant—that are found in botanical form, in plant form, have long, long histories of use within religious spiritual traditions.

Q. Do you have knowledge of how these substances affect the human body and what they react [217] on, whether they are antagonist or agonist of certain parts of the body?

A. Well, yes.

Q. And what is that?

A. Well, yes, I think they have a very strong effect on particular brain neurotransmitter systems, particularly, you know, in the case of lysergic acid and psilocybin and DNT, a very strong serotonergic effect.

Q. Does mescaline have a serotonergic effect?

A. There is some serotonergic and it also affects some other neurotransmitter systems.

Q. So this is an area that you have done a great deal of work in; would that be correct?

A. Oh, this has been a long-term interest. And as I said, I have written in this area. I have given talks in this area. I have consulted in this area.

THE COURT: Well, let me ask specifically, following up on the objection, about your experience with or knowledge of the Navajo/Native American Church practices in the use of peyote: First, have you observed any of the ceremonies; and second, have you participated in any? Or if not, what is the source of your knowledge of that?

[218]

THE WITNESS: Well, the answer is yes to the first two questions. And in addition to that, I have read a great deal and have talked with individuals who have long, long experience within the context of the Native American Church. You know, given the closeness of that phenomenon to the UNIAO do Vegetal Ayahuasca use, it's an area that I am very interested in.

THE COURT: Have you had patients who are members of the Native American Church?

THE WITNESS: Not—not patients. I live in a part of the country where there is minimal Native American Church activity. I imagine if I was working

in this part of the country, I might have a different answer on that.

THE COURT: Have you ever evaluated someone from a psychiatric standpoint who is a member of the Native American Church where you obtained information about the rituals and use of peyote?

THE WITNESS: No, I have never conducted a clinical exam—a formal clinical examination.

THE COURT: Okay. Tell me in more detail about the practice—the ceremonies that you have observed or participated in.

[219]

THE WITNESS: Well, I observed one ceremony, and it was on an Indian reservation in the Southwest. It was—

THE COURT: That's Navajo?

THE WITNESS: Yes, Navajo. And it was an all-night phenomenon. I was very impressed with the individuals who participated, I would say about three-quarters of which were Native American and one quarter were not. Many of these individuals talked about the stories of their lives, how seriously dysfunctional they were with problems with alcohol, problems with violent dyscontrol, chronic patterns of irresponsible behaviors within their families. And then they talked about how their entry into and involvement with the Native American Church had transformed them and how they had become highly functional and had altogether abandoned the use of alcohol and other dangerous drugs and had turned their lives around, and they were pillars of the community. I was very impressed with the substance of these people, and it was

very reminiscent, very similar to the experience I had with the members of the Ayahuasca Church in Brazil.

THE COURT: Okay. Do you remember when you attended that ceremony?

* * * * *

[241] certainly. I mean this is an entire area of testimony. As I told you, every time it came up in our witnesses' depositions, I objected. I said, "This is not an issue and the Court isn't going to let it in."

THE COURT: Okay. Well, in order to move things along, I am going to permit further questioning in this area without shutting the door on your opportunity to develop this issue further to counter what is he testifying to.

MS. GOITEIN: Your Honor, I would ask, if you do end up admitting the testimony, that we have an opportunity to also put on a witness about the health effects of peyote at a later date.

THE COURT: Okay. Go ahead, Ms. Hollander.

Q. (By Ms. Hollander) I was asking you about what you know about Dr. Halpern's study. Has the study been completed?

A. I think—his initial study, I believe, was by and large completed, and he has now been funded for, I believe, an extension, which is ongoing.

Q. And who funded him?

A. Initially, the Heffter Research Institute [242] provided him with funding for the pilot study. Subsequently, he has received a grant from the National Institute of Drug Abuse.

Q. And this is—and you're not aware of any other studies like this; is that right?

A. No. I think this is a very unique study.

Q. Let me ask you, going back to where I really was, which was the issue of psychotic episodes, you said that sometimes someone will be given an antidepressant medication, and it could cause a psychotic episode. And my question is-about that or about anything else —does one always—does a psychiatrist always know that an individual is a vulnerable individual? In other words, can you always tell that before? For example, if someone gives someone an antidepressant medication or if a doctor prescribes Nyquil or somebody goes into the drugstore and gets some, or somebody sees a movie, can you always tell from that person that that person is a vulnerable individual?

A. No, not always.

Q. And why is that?

A. Well—

Q. In other words, do these things sometimes happen—somebody has a psychotic episode and you [243] wouldn't really know from looking at their history that you would expect this?

A. Right. Sometimes histories are incomplete. Sometimes you don't have all the necessary data. Sometimes the warning signs were not flagged early on. And again, you're not provided with sufficient data to make that—to come to that conclusion.

Q. Well, is there ever—in other words, if somebody ever had their first psychotic episode at age 17 or 18 or 25 or 30 and if you look at their past, you really have to look very hard into perhaps that their grandfather was

hospitalized or something before you would know? Does that ever occur?

A. Of course.

MS. GOITEIN: Objection, Your Honor. That is not just leading, it's testifying.

MS. HOLLANDER: I am just trying to get to somewhere, Your Honor.

THE COURT: I understand, but watch the form of your questions.

MS. HOLLANDER: Okay.

Q. (By Ms. Hollander) Let me go back, then. When you say you don't have enough data, what kind of data would you need?

[244]

A. Well, for instance, what was the prior history of mood regulation in that individual. Not always problems with depression or earlier episodes of hypomania or even mania had come to the attention of health professionals. You also may not have access to good family psychiatric histories. Very often the patients don't have good access to family psychiatric histories. Very often you're working with a patient whose articulation skills are rather limited and you just cannot get from him or her the essential information you would need to make a determination that he was—he or she might be at risk.

Q. Now, these psychotic episodes that we are discussing—that we have been discussing, are they all serious?

A. I mean a psychotic experience is always a serious situation. However, I think a critical issue is: How long

is the psychotic state sustained? Some psychotic episodes are very, very transient in nature, only lasting, you know, a matter of hours, even lass than that, versus some psychotic episodes are persistent and intractable, are of a chronic nature and are far more serious.

Q. Have you ever seen or heard about people [245] going into trances as a result of religious experiences?

A. Yes.

Q. Is trance a word that is used in the medical literature? Does it have a definition?

A. Well, in psychiatry it's been an object of study and—

Q. And how would you define a trance?

A. Well, an individual who spontaneously experiences an altered state of consciousness where they lose touch with the immediate environment, are entirely inward, and they are also in a very, very hypersuggestible state.

Q. And we have probably all, from time to time, seen the people on television who—there is some religious person who says something, and then they get hit on the head and collapse backwards. Are you familiar with what I am talking about?

A. Yes.

Q. Is that—would you describe that as a trance or not?

A. Yes, I would.

Q. Are those people suggestible?

A. I believe they are very, very hypersuggestible.

[246]

Q. Well, Dr. Grob, how many years have you been studying the UDV?

A. Almost ten years.

Q. Do you have any idea how many conversations you have had with UDV members in Brazil and the United States over the years?

A. I have had a lot of conversations. I could not put a number to it, but I've had a great many opportunities to talk about this in Brazil and the U.S.

Q. And have you attended UDV sessions in Brazil?

A. Yes.

Q. And have you participated in those sessions and have you—did you drink hoasca during any of those sessions in Brazil?

A. In Brazil I have.

Q. How many people have you personally seen, if you can estimate, in sessions in Brazil?

A. Well—

Q. Any idea?

A. —considering that a few of these sessions were at conferences where there were a great many people, many of whom attended the session, upwards to—I mean there was; one session * * *.

* * * * *

[251]

Portuguese. The government had them translated into English. And I think the government replaced the Portuguese with the English. We would like to—and the government doesn't object, and we will put the

Portuguese back in so that we just have both of them. We will just have to do that shortly.

THE COURT: Okay.

Q. (By Ms. Hollander) Have you reviewed those documents?

A. Yes.

MS. HOLLANDER: May I approach, Your Honor?

THE COURT: Yes.

Q. (By Ms. Hollander) I think that Dr. Brito will probably be the better one to ask about this in detail. But having reviewed those, does that in any way change your opinion about whether there is a significant health risk with hoasca when taken within the confines of the UDV?

A. No.

Q. And why not?

A. Well, these are approximately 20 case reports of individuals who might be described as having had psychiatric problems. Most—you know, many of these were relatively transient in nature [252] and resolved. There were a few cases of very serious mental illness. But these individuals appeared to have, you know, longstanding problems insofar as their mental function. And again, these would be very, very high at risk individuals to begin with who would be, you know, more vulnerable to a variety of stressors in their lives.

Q. And did all 20 of them—was the hoasca the participating factor in all 20 of them?

A. No, no, not at all. Not at all. You know, in many of these cases the hoasca seemed to be just coincidental to it. It did not appear to be the key precipitant.

Q. So there are fewer than 20 cases?

A. Yes.

Q. Now, if—and I think this has come out in depositions. If in fact—and how many years have they been reporting; do you know?

A. I believe this goes back at least to the mid '90s.

Q. Okay. If, as has been stated in numerous depositions, there are approximately 7- or 8,000 UDV members and they drink the tea twice a month, is that a statistically significant number?

A. That is a very small number of cases, [253] given how many people participate and how many years they have been trying to collect such data.

Q. So do you consider that statistically significant, given that number?

A. Not at all.

Q. Now, one of the issues—the other issue that the government has raised that I am sure you are aware of is the issue of serotonin syndrome. Can you explain briefly what serotonin syndrome is and why this may be an issue here in this case?

A. Serotonin syndrome is induced by medication which causes release of serotonin, the neurotransmitter serotonin, or blocks its reuptake. It's a syndrome of excess serotonin caused by medication. Are you also asking me why it's relevant to the situation at hand?

Q. Yes.

A. Well, several years ago, along with my colleague, Dr. Callaway, I published a report, a case report on a serotonin syndrome experienced by a man who was taking the selective serotonin reuptake inhibitor antidepressant fluoxetine or Prozac, who, after being on Prozac for several months, participated in an ayahuasca session and underwent what I believe to be a serotonin syndrome.

[254]

Dr. Callaway and myself felt this was a serious issue. We spoke—we had spoken at length with our colleagues, medical colleagues in Brazil, and we also felt it was important to publish this case report and our understanding of the mechanisms.

Q. And did the UDV, to your knowledge, do anything as a result of that study?

A. Yes. They very—they were very receptive to what we had to say and implemented a process of alerting their membership and screening individuals who had expressed an interest in participating to caution about the use of ayahuasca when someone is on an SSRI antidepressant.

Q. Now, is that study—just so we are clear, is that the study that is entitled, "Ayahuasca preparations and serotonin uptake inhibitors: A potential combination for severe adverse interaction," that was in the Journal of Psychoactive Drugs?

A. Yes, that was the title of our article.

Q. And the government—I would like to show you—

MS. HOLLANDER: If I may approach, Your Honor?

THE COURT: Yes.

[255]

Q. (By Ms. Hollander)—Exhibit CCC.

THE COURT: CCC. Do you have that available? I think that's the only copy.

Q. (By Ms. Hollander) Now, CCC is an article that is one of the government's exhibits, and it's an article entitled, "Serotonin Syndrome." I am trying to find the date—July 1, 2000, written by Mason, Morris and Balcezak in the Journal of Medicine. Is that a journal that you are familiar with?

A. Yes.

Q. Is that a journal on which doctors in your field would rely?

A. Yes.

Q. And have you reviewed this article?

A. Yes.

Q. This article mentioned, I believe, 39 cases of serotonin syndrome; is that correct?

A. Yes.

Q. And on page 5 of—I think we all have the same copy off of Westlaw, it says, "Ayahuasca," and it lists one reported case and cites—it's citing the article that you and I just mentioned, correct? That is number 4?

A. Yes, correct.

[256]

Q. Are you aware of any other research other than yours?

A. No. I believe we are the only publication in the literature which has talked about serotonin syndrome and ayahuasca.

Q. So what—you talked about ayahuasca, and one of their 39 cases was the one that you report. What kinds of medication interactions caused the others?

A. Often particular combinations of antidepressants, particularly SSRI antidepressants and monoamine oxidase inhibitor antidepressants, also the combination of L-tryptophan and monoamine oxidase inhibitors. There have also been some case reports of individuals taking only SSRI antidepressants, and there have even been over-the-counter cold preps. I believe there was an example—I have seen an article on Nyquil, which contains dextromethorphan.

Q. And Nyquil is not a controlled drug?

A. No, it's an over-the-counter cold medicine.

Q. Have you ever seen any references to St. John's Wort?

A. Yes, I have seen a reference to St. John's [257] Wort being implicated in a case of serotonin syndrome.

Q. And what is St. John's Wort?

A. It's an herbal medicine which has been used as an antidepressant. It's an over-the-counter preparation, and it's very popular in this country and in Europe.

Q. Are most doctors aware of the problems of serotonin syndrome?

A. No.

Q. So when a doctor prescribes someone an SSRI—I take it SSRIs are becoming more common; isn't that true?

A. Yes. They're very common these days.

Q. Were they so common ten years ago?

A. No, no. It was only 10 or 12 years ago that the first SSRI was released on the market. That was Prozac.

Q. And is it correct—and correct me if I am wrong— that this whole problem of serotonin syndrome has really come about because so many people are taking SSRIs now?

A. Yeah, I believe so.

Q. And you said most doctors don't warn people. So if someone starts taking one of these—[258] Prozac is an SSRI, is it not?

A. Right.

Q. To your knowledge, when a doctor prescribes Prozac, do they always tell people, "You better not take St. John's Wort or Nyquil," or, "You had better be concerned about serotonin syndrome"?

A. Generally not, no.

Q. And why is that?

MS. GOITEIN: Objection, Your Honor. There is no basis for any personal knowledge of what all the doctors are telling their patients.

Q. (By Ms. Hollander) Well, have you read in the literature of cases where people have had serotonin syndrome as a result of these combinations?

A. Yes.

Q. Is there anything in the literature that would alert you to the fact whether the doctor had warned the people or not?

A. No.

Q. You are just assuming they didn't get warned or they didn't follow instructions, right?

A. It would be highly unusual to provide that warning.

MS. GOITEIN: Again, Your Honor, I am [259] going to object for the same reason.

THE COURT: Well, he is going to—

MS. HOLLANDER: He's going to explain it.

A. Well, serotonin syndrome is very unusual, and it's a phenomenon that really has only been discussed in the literature to any great degree recently. And most physicians really have not been alerted to this. I might —can I say something?

Q. (By Ms. Hollander) Go ahead, finish.

A. I mean, you know, the most common cause would be, let's say an interaction between SSRIs and monoamine oxidase inhibitors. But I should also add that there are case reports in the literature which discuss utilizing this combination in the treatment of patients who are refractory or nonresponsive to treatment, other medication treatment. So even though there are case reports of serotonin syndrome, that combination has also been used safely by clinicians in the treatment of serious depression.

Q. So are you saying that serotonin syndrome does not always occur?

A. Yes.

Q. And in your research, did you come to the conclusion that if someone, for example, in the UDV starts taking an SSRI, has already been drinking the [260] tea over a period of time, would that have any effect on whether that person would be more likely or less likely to get a serotonin syndrome?

A. You know, I have had a lot of discussion on this issue with physicians of the UDV, particularly Dr. Glacus Brito. And I have learned that there are individuals who had been drinking the ayahuasca for some time as part of the UDV who, for a variety of reasons, were administered an SSRI who appeared to tolerate that combination and did not sustain the phenomena that occurred in the case that I reported in the literature.

MS. GOITEIN: Objection, Your Honor. That is hearsay and it's not the type of hearsay that experts rely on.

THE COURT: Well, let me ask, is Dr. Brito going to testify?

MS. HOLLANDER: Yes, he is, and he is going to testify about this in much more detail.

THE COURT: Why don't we wait and see what his personal experiences are?

MS. HOLLANDER: We will.

THE COURT: Go ahead.

Q. (By Ms. Hollander) All I really wanted to ask you about is are you aware that the UDV has [261] created a notification system?

A. I have been very impressed with the degree to which they have been diligent in informing their mem-

bership of the potential for problems with this combination.

Q. Does the everyday individual who is not in the UDV have the same kind of notification?

A. No, no.

Q. Now, looking at this article that the government provided that says, "Serotonin syndrome," how many cases did they review? I think it's on page 15, the summary.

A. These pages are numbered a little different.

Q. Oh, well, it's the summary. Looking at the summary, do they describe the number of cases?

A. They state they looked at 39 cases that had been reported.

Q. And does it say, "39 cases described in the English language literature since 1995"?

A. Yes.

Q. Do you agree that that seems like a reasonable statement of how many cases they described in the literature?

A. Yes.

[262]

Q. And they reported on one death out of that 39?

A. Yes.

Q. And that is—I believe that was case number 1. I'm trying to look at the one—that may not be one of their specific cases. In the summary they say, "One death occurred. In most cases, 57.5 percent had complete resolution of their symptoms within 24 hours of

presentation." Would you agree that that is a statement that would seem reasonable to you?

A. Yes.

Q. Okay. Now, they also say in this article that, "In the present study, we found that serotonin syndrome is generally a self-limiting condition that resolves with discontinuation of serotonergic medications and supportive care." Do you agree with that?

A. Yes.

Q. So most cases just resolve if you stop taking the drug? Is that what that means?

A. Yes.

Q. And is the person left with any long-time psychosis?

A. No.

[263]

Q. Which would you consider more dangerous, for the theoretical possibility of a serotonin syndrome: Somebody taking the dose of ayahuasca that you know the UDV uses, given your studies, and Prozac, or someone taking a prescription MAOI and Prozac?

A. Well, the prescription MAOI with Prozac would be of far greater potential danger.

Q. And why is that?

A. These are irreversible MAOIs. They have a much longer sustained action than the reversible plant MAOI which is in ayahuasca.

Q. Now, are there people who become chronic users of dextromethorphan?

A. Yes, there are.

Q. And that shows up in Nyquil and other cough medicines; is that correct?

A. Yes.

Q. How would you compare the danger of someone drinking ayahuasca in the UDV and taking Prozac to someone who is consuming unregulated amounts of dextromethorphan and an SSRI?

A. Well, I would say the dextromethorphan and the SSRI would be of far greater potential danger.

Q. I want to ask you about another article. [264] Before I do, one other question on your experience with the UDV. Can you say why, as a researcher—and I assume you consider yourself a researcher of hallucinogens, correct?

A. Yes.

Q. Why would you take and drink ayahuasca or hoasca, and why also would you consume peyote?

A. You say why in general or why—

Q. Why, as a researcher?

A. Why did I when I was in Brazil?

Q. Yes.

A. Oh, I mean there were, you know, a couple of reasons: One is—well, I think the main reason is that it would give us—give me personally a much better understanding of the internal state induced by ayahuasca. I think I would have a much greater facility insofar as understanding what the subjective effects are. I might also add that there is a tradition in the field of medicine of physician auto experimentation with drugs that they are investigating. In fact, there is a very good review

article on this some years ago in the New England Journal of Medicine.

I might also add, if are you asking about personally, that my father, who was a leading [265] researcher in neuromuscular disease, when at Johns Hopkins in the 1950, also was consulting with the United States Army Chemical Warfare Research Center and he was researching antidotes to nerve gas. And he actually was primarily involved in discovering the major antidotes used for seron nerve gas. And in the course of his work, he was working with cholinesterase inhibitor drugs. Prior to administering the drug to his research subjects, he took it himself to better understand the effects and to better establish what the safety parameters were.

So I think in the field of medicine, and within my family, which is a medical family, this—you know, this is a well—it has been, over time, a well-accepted model.

Q. And finally, I want to ask you about another treatise. What is NIDA?

A. NIDA is the National Institute of Drug Abuse.

Q. Is that a government organization?

A. Yes.

Q. And is that the same organization that the government's witness, Dr. Genser, is associated with?

A. Yes.

[266]

Q. Are you familiar with NIDA research monographs?

A. Yes.

Q. And what are they?

A. Oh, they are—NIDA publishes reviews of topics pertaining to drug abuse where distinguished investigators in the field present their research, where they also discuss theoretical mechanisms. And I would say it's a very well-thought-of series of publications, valuable in the field.

Q. And do you and other doctors in your field rely on statements that are made in those monographs?

A. Oh, yes, certainly.

Q. I would like to show you Plaintiff's Exhibit No. 56 and ask you if you are familiar with that particular monograph that I believe has not yet been published, but I believe you have seen that?

A. Yes, I have.

Q. And am I correct that that came from something called a Hallucinogen Symposium?

A. Yes, there was—some months ago there was a symposium, and this monograph will discuss some of the discussion at that symposium.

Q. Now, I want to ask you some specific [267] statements. In that I want to focus on some. Are you familiar with Dr. R.R. Griffith?

A. Well, that is Roland Griffith. He is from Johns Hopkins, and I previously was at Johns Hopkins. I have a lot of familiarity with Dr. Griffith and his work.

Q. Is he considered an expert in the field?

A. Oh, yes. He is very well thought of.

Q. Do you also know H. deWit?

A. Harry deWit. I believe he's at the University of Chicago, also very prominent in the field of substance abuse research.

Q. I want to ask you whether you would agree with the statements by these individuals, "Psychoactive plants have hallucinogenic effects"—I'm sorry. I'm reading. "Psychoactive plants having hallucinogenic effects have been valued for thousands of years in many cultures, in a structured context, for their ability to facilitate spiritual (i.e., mystical/transcendent) experiences."

MS. GOITEIN: Your Honor, I am going to object because this exhibit hasn't been moved into evidence and it appears to be being used for its truth, despite the way it's being used.

MS. HOLLANDER: And Your Honor, this is a [268] learned treatise. I don't intend to move it into evidence. I can ask my expert whether he would rely on these so that they are again available for cross-examination. But the only way to make them available for cross-examination is to ask my expert if these are statements upon which he and people in his profession would rely under 803-18, and that is what I intend to do. I don't intend to move it into evidence. I am asking him if he would rely on these statements, because as the Court knows, it's very difficult to get the opposing side's expert to accept something as a learned treatise until you ask your own expert, and that is what I am doing.

THE COURT: He can testify to that.

MS. HOLLANDER: Thank you.

THE COURT: I'm sorry. Go ahead.

MS. GOITEIN: Your Honor, I would just say that the way that a learned treatise is qualified is not by reading parts of it and asking if a witness agrees. It's by establishing whether or not this is an authoritative text in the field that is relied on. I don't believe that has been established. If it is established, I have no objection to parts of it being read, but—

THE COURT: Okay. I don't think it has [269] been asked in that form, but go ahead.

MS. HOLLANDER: Well, Your Honor, it's not the text, it's according to the rule. "To the extent called to the attention of an expert witness, upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals or pamphlets on the subject of medicine that is established as a reliable authority by the testimony or admission of the witness." Now, the only way could I ask him if he would rely on those statements is to read him those statements.

THE COURT: Well, you might want to do the latter part of what you read first. Read it again, the last part of it.

MS. HOLLANDER: "Established as a reliable authority"?

THE COURT: Yes. You might ask him about that first.

MS. HOLLANDER: I'm sorry. I thought I did, but I will ask him again.

Q. (By Ms. Hollander) Do you consider statements that Drs. Griffith and deWit would say as reliable authority upon which you would rely?

A. Of course. They are leading authorities [270] in this field and well recognized as such.

Q. And the NIDA research monographs, do you consider those generally when they publish statements by the individuals? I assume that every statement that NIDA publishes, you wouldn't consider reliable, but you would have to look at the individuals who made the statements, correct?

A. Yes, yes, and these individuals are very prominent. So I would—I would, you know, be very—I would find these particular—statements from these individuals as having very high credibility.

Q. And specifically the statement that I would like to ask you whether you would consider reliable is this statement that I just read. Do you consider that a reliable statement?

A. Yes, I would.

THE COURT: Where does that appear? I am not sure.

MS. HOLLANDER: Where does the statement appear?

THE COURT: Yes.

MS. HOLLANDER: It's actually the first page, and it's in the first paragraph. And the first word is "yet," but I left out the word yet.

[271]

THE COURT: Okay. I see where you are referring to.

Q. (By Ms. Hollander) I would also like to ask you—

THE COURT: Well, let me ask Ms. Goitein, did you still have an objection to—

MS. GOITEIN: Yes, I do, Your Honor. I think this is an overbroad interpretation of authoritative text. It's something that happens to be written in the NIDA research monograph by someone that the expert trusts. To me, that is overbroad. I would ask that if it's admitted, that we be allowed to utilize the same definition.

THE COURT: Well, let me ask directly, do you challenge the statement that psychoactive plants having hallucinogenic effects have been valued for many years in many cultures?

MS. GOITEIN: I have no basis for challenging that or not challenging that. That is not my point. My point is that is hearsay and that the person who made that statement should be here, unless this is established as an authoritative text, and I don't believe that that is the case.

THE COURT: Okay.

MS. HOLLANDER: Do I need to argue this [272] further, Your Honor, or should I go on? I mean the rule is much broader than text.

THE COURT: Well, actually, it cites to what I guess is another publication by Schultes and Hofmann in 1992, unless I am misreading this.

MS. HOLLANDER: It does, Your Honor, and I would be happy to ask my witness if he would rely on Dr Schultes.

Q. (By Ms. Hollander) Would you rely on Dr. Schultes?

A. Oh, absolutely.

Q. Who is Dr. Schultes?

A. Dr. Schultes, he is deceased just a few months ago, but he was a very, very prominent anthropologist at Harvard University and is one of the most esteemed anthropologists in this field or in the world. He is extremely well thought of, without question.

Q. Are you familiar with his book, Plants of the Gods, Their Sacred Healing and Hallucinogenic Powers, written in 1992?

A. Yes, I am intimately aware of that work. I have referenced it frequently in my own writings and I use much of that material in talks I have given to medical and psychiatric groups.

* * * * *

[273]

Q. Did Dr. Schultes, to your knowledge, spend any time in the Amazon?

A. Yes. He spent many years, you know, with the native peoples of the Amazon and really was responsible for much of the very valuable ethnobotanical knowledge we have from that part of the world.

Q. Do you know whether, as a researcher, he ever consumed any of the substances he was writing about?

A. Yes, he did, starting with peyote when he was a graduate student.

Q. Okay.

THE COURT: Let me ask if this is a good breaking point? I have to attend a meeting at noon.

MS. HOLLANDER: We can certainly break. I have very little to go, but I would be happy to break.

THE COURT: Okay, How much longer would you estimate?

MS. HOLLANDER: Probably about—I am just going to do a few more on this, probably literally five minutes or less, if we don't have questions, if we don't' have argument. But if we are going to have argument, then it's going to be * * *.

* * * * *

[277]

Q. You were asked earlier, when we were discussing your knowledge of peyote. I believe you said you had written about peyote. In your—am I correct that one of the articles listed in your CV, which is an exhibit in this case, is there one called, "Psychiatric research with hallucinogens: What we have learned?"

A. "What have we learned?"

Q. "What have we learned?" from the, "Heffter Review of Psychiatric Research," Volume I, 1998?

A. Yes, that's my article, and that was actually originally published in the Journal of Ethno Medicine, 1994, but yes, that is my article.

Q. And in that article, did you discuss peyote?

A. Yes, I did.

Q. In what context?

A. In the context of its utilization by the Native American Church, and particularly within the context of its safety and efficacy with alcoholics who have been able to rid themselves of their serious self-destructive

use of alcohol as a result of their participation with the Native American Church.

Q. Are you familiar with Karl Menninger?

[278]

A. Oh, of course.

Q. And who is he?

A. He is a very revered figure in the history of American Psychiatry. He's really one of the founders of the field in this country, and the founder of the very, very prominent Menninger Clinic in Topeka, Kansas.

Q. And he had a statement in your article; is that correct?

A. Yes, I used a quote of Dr. Karl Menninger's.

Q. I take it you would consider him a reliable authority?

A. Highly reliable, highly esteemed.

Q. And would you rely on his statement that, and I quote, "Peyote is not harmful to these people. It is beneficial, comforting, inspiring, and appears to be spiritually nourishing." Would you rely on that?

A. Yes, I would.

Q. Would you rely on this statement: "It is a better antidote to alcohol than anything the missionaries, the White man, the American Medical Association, and the Public Health Services have come up with." Would you rely on that?

[279]

A. Yes.

Q. In that statement—

MS. GOITEIN: Your Honor, I would like to renew my objection. At this point, I would also like to object to reading from an exhibit that I haven't seen and I don't know what it is.

MS. HOLLANDER: Well, Your Honor, it was in his CV. She has had his CV now for almost a year.

THE COURT: The article is in the CV?

MS. HOLLANDER: Yes, sir.

THE COURT: You mean the one that you quoted?

MS. HOLLANDER: Yes. The one that I just quoted from page 17 of Grob, "Psychiatric Research and Hallucinogens."

MS. GOITEIN: Your Honor, she's quoting—the quote is in Dr. Grob's paper, but it's a quote from a larger paper which we don't have here and which was not listed in Dr. Grob's CV.

MS. HOLLANDER: I beg to differ, Your Honor. My next question was: Where did this quote from Dr. Menninger come from? I am only raising this because it was raised as an issue by the government earlier. And that reference, which is [280] listed in the same article, which has been available since his CV has been available—but it was attached, I believe, to our initial petition. And the reference is to Bergman, RL, 1971. "Navajo Peyote News, Its Apparent Safety," in the American Journal of Psychiatry, 128, 695 to 699.

MS. GOITEIN: I'm sorry, what are you reading from?

MS. HOLLANDER: I am reading from the references in Dr. Grob's article, which is my next question to Dr. Grob.

MS. GOITEIN: Your Honor, there is an article—there is a reference section in the back of an article that was mentioned in the CV of Dr. Grob. I do not think it's appropriate to be introducing testimony from that article here when I have had no chance to look at that, no realistic, effective chance to look at that.

THE COURT: Well, your question is whether he would rely on those statements?

MS. HOLLANDER: Yes, sir, that's all.

THE COURT: And your concern is what?

MS. GOITEIN: I have a couple of concerns. One of them is certainly that this is testimony on the subject of the health effects of peyote, which * * *.

* * * * *

[290] Honor.

THE COURT: Go ahead.

Q. (By Ms. Hollander) I am going back and I am going to conclude with a discussion of the Plaintiffs' Exhibit No. 56, which was the NIDA monograph that we were in the middle of when we broke for lunch. One of the other statements in that monograph is from a C.R. Schuster. Do you know who that is?

A. Yes, certainly. Dr. Schuster is the former Director of the National Institute of Drug Abuse, and he is currently a professor at the Wayne State School of Medicine. A very prominent researcher in the field of substance abuse.

Q. And he formerly worked for the government?

A. Formerly the Director of NIDA, for many years.

Q. Okay. Are you also personally familiar with Dr. Schuster?

A. I have met Dr. Schuster.

Q. Let me ask you if you consider this statement by Dr. Schuster to be a reliable statement. In the final paragraph of his section of this monograph, where he was talking about MDMA, he says, "It is important to distinguish this kind of [291] drug abuse from the use of psychoactive substances within the context of a religious ceremony. As has been shown many times in laboratory studies, set and setting are extremely important determinants of whether a drug experience results in a spiritual epiphany or a, quote, 'bad trip,'" end quote.

"As is the case when considering the value of psychoactive drugs for therapeutic purposes, one must look at the risk/benefit ratio. This should also be done when considering the use of psychoactive drugs for their effects on spirituality."

Would you consider that reliable?

A. Yes, absolutely.

Q. And the final report in that symposium is by a Dr. Herbert Kleber? Is it Kleber?

A. Kleber.

Q. Are you familiar with him?

A. Yes, I am.

Q. Who did is Dr. Kleber?

A. Dr. Kleber is currently a Professor of Psychiatry at Columbia University. He runs their Substance

Abuse Division, and Dr. Kleber was formerly the Medical Director of the Drug Czar's Office during the administration of George Bush, Sr.

[292]

Q. Is he a psychopharmacologist with experience in drug abuse policy?

A. Yes, a very senior person in that field.

Q. Now, is this the same Herbert Kleber who edited the textbook that's Government's Exhibit EEE which Dr. Ungerleider's chapter is in?

A. Yes, I believe so.

Q. And you said earlier that you had the next chapter, but—

A. Well, we discussed this. Apparently Dr. Ungerleider and Dr. Pechnick have written chapters on hallucinogens in both Dr. Kleber's text and also another text called, The Comprehensive Textbook of Psychiatry, edited by Dr. Millman, et al. And my chapter on MDMA actually follows the Ungerleider chapter in the Millman text.

Q. So you thought that's the one we were referring to earlier?

A. Yes, yes.

Q. Now, is Dr. Kleber someone—in addition to relying on Dr. Schuster, would you also rely on him?

A. Yes.

Q. And would you rely on his statement that, "The key question from a policy point of view is: [293] How should the conflict between the country's compelling need not to interfere with the religious practice and the

equally compelling need to protect our people, especially the vulnerable young, be resolved? This is a difficult and cloudy issue. However, the current position that permits bonafide members of the Native American Church to use peyote in a controlled, communitarian setting may serve as a useful model and could be expanded."

Do you consider that reliable?

MS. GOITEIN: Objection, Your Honor.

A. Yes, I do.

MS. GOITEIN: She is asking him about a policy decision. This is not an expert in pharmacology. This is an expert in medical exams. That is not a medical question.

THE COURT: Well, I will take it as his personal opinion on this proposed policy.

MS. HOLLANDER: Your Honor, I will pass the witness.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MS. GOITEIN:

Q. Dr. Grob, your report says that the materials you considered in forming your opinions * * *.

* * * * *

[305] Dr. Callaway, who certainly would know.

Q. So some of the assessors were blinded and others were not?

A. Well, we are talking about a simple blood draw.

Q. Dr. Grob, please just answer my question. Some of the assessors were blinded, and the others were not?

A. For the blood draws?

Q. Correct.

A. Yes, I assume so.

Q. And for the neuropsychological assessment, the assessors did know which group the person was in; is that correct?

A. I believe so.

Q. And obviously, you, when you were doing a life story, you obviously knew?

A. Of course.

Q. Right. And for the life story interviews you used, a translator, correct?

A. Yes.

Q. And the person you used was a UDV member, correct?

A. At that time she was.

Q. And you didn't have any baseline data [306] about the neuropsychological profile of the UDV members before they started using ayahuasca, correct?

A. Of course not. It would have been necessary to get that many, many years ago.

Q. And the lack of baseline data makes it impossible to discern, from the tests you did, whether ayahuasca was responsible for the results, correct?

A. Yeah, and I clearly qualified that in the—when I wrote the articles which were published and when I give talks on this topic.

Q. And now you have done so in court?

A. Yes.

Q. And indeed, if the UDV were successfully screening out people who were less emotionally stable and mature, as they claim, you would expect the test group to score higher on the tests that you administered from the outside, correct?

A. You'll have to repeat that, please.

Q. If the UDV were successfully screening out people who were less emotionally stable and mature, you would expect the test group to score higher on the test that you administered from the outside, correct, even before they ever tried ayahuasca?

[307]

A. I suppose so.

Q. Your study was an effort to collect a basic body of data without attempting to relate the findings to either possible detrimental effects of ayahuasca or to possible therapeutic effects; is that accurate?

A. Please rephrase that for me.

Q. Your study was an effort to collect a basic body of data without attempting to relate the findings to either possible detrimental effects of ayahuasca or to possible therapeutic effects?

A. Not necessarily.

Q. Could you please look at Exhibit LL. Do you recognize this article with your name on it?

A. Yes, I do recognize this one.

Q. And this one was published, correct?

A. Yes.

Q. And you were one of the authors?

A. I was the third of three authors, with Dr. McKenna the first author, Dr. Callaway the second author.

Q. Please look at what is page 61, at the bottom of those pages. I am going to start reading from the paragraph at the bottom that says, "Since this study was the first of its kind, there was [308] virtually so preexisting data on the objective measurement of the physical and psychological effects of ayahuasca in human subjects. As a result, the study was in some respects a pilot study. Its primary objectives were modest, representing an effort to collect a basic body of data without attempting to relate the findings to either possible detrimental effects of ayahuasca or to possible therapeutic effects." That is what it says, correct?

A. Yes, okay.

Q. And that is the truth, isn't it? And you could not—

COURT REPORTER: Wait. He hasn't answered. Have you answered?

THE WITNESS: Yeah, pretty much.

MS. GOITEIN: I thought I heard a yes.

THE WITNESS: I will say in come respects.

THE COURT: Just to clarify the record, the answer was, "Yes," was it not?

THE WITNESS: Yes, a qualified yes.

Q. (By Ms. Goitein) And you could not, on the basis of your study, conclude, with a reasonable degree of scientific certainty, that there is little risk of adverse

consequences of ayahuasca use by the [309] UDV, correct?

A. This was a pilot study, and repeatedly we state that.

Q. Moving on from your study to some of your more general testimony about hoasca, in one part of your declaration, your first declaration, you talk about some of the effects of hoasca. But it turns out, or it turned out in your deposition that you were really talking about hallucinogens generally, correct?

A. Yes.

Q. And that is paragraph 7 in your declaration. I'm sorry, your declaration is—well, I believe it's Plaintiffs' Exhibit 11, but that is all right. You don't need to look at it. It's not important. It is in that book. In that book, it's going to be under Tab No. 1, but I don't think the Court—

A. It's what number again?

Q. Paragraph 7.

A. Yes.

Q. Is that in your first declaration?

A. Yes.

Q. And it turns out that you were talking about effects of hallucinogens generally?

* * * * *

[317]

A. Right. I said, "I can recall one case of a man who seemed to be very briefly caught up," so I had heard. My—as I recall, my subject was telling me his story,

and it was—it appeared to be a transient phenomena where there was the possibility that this was going on.

Q. (By Ms. Goitein) You said in your report that more experienced UDV members report excellent recall of the contents of the session, correct?

A. That is what they tell me, yes.

Q. But you haven't tested this, have you?

A. You're asking me if I have tested their memory of—during an actual session? No, that was not the design of the study.

Q. So your basis for knowing that they have excellent recall is that they told you that they have excellent recall, correct?

A. Excellent recall of the content of a session, as opposed to the level of recall and memory we tested as part of our study.

Q. Yes. And what I am asking you is: Your basis for asserting that the UDV members have excellent recall of the contents of the session is that the members have told you that they have excellent recall of the contents of the session, * * *.

* * * * *

[318] correct?

A. Right. That is what they have told me, and our testing indicated they had very good recall. But this was outside of the session. But they do talk about their good memory, including the content of a session.

Q. And you haven't tested their recall of the contents of sessions, correct?

A. Correct.

Q. It is your belief that the more experiences members of the UDV are capable of having very good judgment, even when under the acute effects of hoasca, correct?

A. Yes.

Q. And they would be able to respond to an emergency if they had to?

A. Yes.

Q. And they would be able to respond appropriately?

A. I believe so.

Q. But you have only seen this tested twice, correct?

A. Yes.

Q. And those were the two cases you told us about earlier?

[319]

A. Yes.

Q. And other than that, you are basing this judgment on what you have been told by UDV members, correct?

A. Yes.

Q. Now, you said that in all the sessions you had attended, you had only observed these two adverse events, correct?

A. I believe so.

Q. You have attended fewer than 15 sessions in Brazil, correct?

A. Yes.

Q. And you have only observed two sessions where you weren't, yourself, drinking hoasca, correct?

A. In one or two sessions.

Q. One or two sessions?

A. I am trying—I can remember one clearly. There was one session where I was an observer, yes.

Q. You have testified that the strongest effects of the tea wane after two and a half to three hours, correct?

A. Yes.

Q. And to your knowledge, the sessions last for four hours?

* * * * *

[325]

as there was with peyote. And in terms of not objecting to LSD, when I objected about peyote, peyote is the subject of the equal protection argument in this case, which is why it's very important that we be able to put on evidence if they are going to. So that is the difference.

Q. (By Ms. Goitein) With the people who smoked—well, some individuals who have smoked DMT have reported prolonged dissociative states which can catalyze latent anxiety disorders to manifest for prolonged periods of time, correct.

A. You're asking about smoked DMT?

Q. Yes.

A. And repeat that, please.

Q. Some individuals who have smoked DMT have reported prolonged dissociative states which can

catalyze latent anxiety disorders to manifest for prolonged periods of time, correct?

A. Yes.

Q. But you're less concerned about this effect with hoasca, even though hoasca does contain dimethyltryptamine, correct?

A. The hoasca experience, as we talked about in the deposition, is a profoundly different experience than smoked DMT.

[326]

Q. And one of the reasons that you believe it's different is because you believe that the effects of hoasca are significantly less intense than those of smoked dimethyltryptamine, correct?

A. The intensity is much, much less. Also, the onset of smoked DMT is many, many, many orders of magnitude quicker. It's a much shorter duration. It's a quicker onset of action.

Q. Dr. Grob, I specifically said, "Part of the reason that you think they are different is because the effects of hoasca are significantly less intense." We may get to the rest of it, but you do need to try to stick to my questions.

A. Okay.

Q. And the only studies that have used objective measures to measure the intensity of the hoasca experience are yours and Jordan Riba's, correct?

A. Repeat the question, please.

Q. The only studies that have used objective measures to measure the intensity of the hoasca experience are yours and Jordan Riba's?

A. Yes.

Q. And there haven't been any controlled studies in which a group of people compared the [327] effects of hoasca to those of smoked DMT, correct?

A. Not smoked DMT, no.

Q. Or any studies in which one group of people compared the effects of hoasca to those of intravenous DMT, correct?

A. Not a specific study, per se, although the measures we used and Riba used was the identical measure to which Strassman used in his intravenous DMT study. And there we can clearly see that on measure of intensity, the hoasca experience is of far lesser intensity than what Strassman reported in his intravenous DMT study.

Q. And there you are comparing what one group of people reported about hoasca to what a different group of people reported about taking dimethyltryptamine, correct?

A. Correct.

Q. And the scale that you and Riba used to measure intensity is, as you said, the Strassman hallucinogen reading scale?

A. Correct.

Q. And that scale was developed for use with the intravenous dimethyltryptamine experience; is that right?

A. Yes.

* * * * *

[338] than DMT is, the duration of effect of hoasca is also more comparable to LSD than dimethyltryptamine, correct?

A. The duration of hoasca, about four hours. The duration of LSD can be eight to ten hours.

Q. And the duration of dimethyltryptamine?

A. Smoked or injected, a few minutes.

Q. The rate of onset of hoasca is not an uncommon one among hallucinogens, is it?

A. Correct.

Q. And these hallucinogens have been found to precipitate various types of problematic psychological reactions, correct?

A. Well, depending upon the context.

Q. Well—

A. Certainly there are reports. I have reported that as well can occur.

Q. And you would agree with Dr. Genser's list of the various adverse effects that have been observed in connection with hallucinogen use, correct?

A. I think we went over this in my deposition. I think I agreed with some of what he said.

Q. I would like to refer you to page 100 of [339] your deposition. The last part of my question there was, "Do you agree with Dr. Genser's description of potential adverse effects for other hallucinogens?"

A. Excuse me, you said page 100?

THE COURT: Which line is it?

MS. GOITEIN: Page 100, line 2.

THE COURT: All right.

THE WITNESS: Can I see your copy?

THE COURT: It's the second part of the sentence on line 2.

THE WITNESS: It starts on 99, "No, my question was"—

MS. GOITEIN: Yes. I was filtering out all the stuff at the beginning, but I will read it.

Q. (By Ms. Goitein) "No, my question was accepting what you said, that you can't necessarily generalize from other hallucinogens to ayahuasca, do you agree with Dr. Censer's description of potential adverse effects for other hallucinogens?

"ANSWER: He is listing—I brought this chapter, also. He is listing what has been reported in the literature for the general class of hallucinogens. Some would be more likely to occur than others. Some would be very rare, but these are all in the literature."

[340]

A. Right. In reference to hallucinogens as a general class?

Q. Correct . And the rate of onset of hoasca is not an uncommon one among this class of hallucinogens, correct?

A. Correct.

Q. And these effects in Dr. Genser's list include persistent—persisting perceptual disorder, chronic anxiety, depressive states?

A. Tell me where you are.

Q. Well, I—

A. Okay. I'm sorry. Go ahead.

Q. The adverse effects of hallucinogens generally—

A. Generally.

Q. —include persisting perceptual disorder, chronic anxiety, and depressive states, personality changes, diminution of socially-acceptable behaviors, schizophrenic form, and/or prolonged psychotic reactions, acute anxiety and panic reactions, paranoid reactions, precipitation of violence, suicidal ideation, accidental injury based on impaired judgment or perception. These are the ones that have been reported in the literature, correct?

[341]

A. Right. Some are very, very rare. Several of them on that list are very, very rare, even within the general class.

Q. And you have testified that persistent disturbance of reality function can occur with hallucinogens, correct?

A. Rare, but can happen.

Q. You have testified that other substances can trigger psychosis as well, correct?

A. Yes.

Q. And you have testified that stressful events can trigger psychotic episodes, correct?

A. Yes.

Q. And even going to a movie can trigger a psychotic event; is that right?

A. It can, depending on the circumstance. And it is unusual, but that can be a tremendous stressor to a

highly vulnerable individual. And I provided a case example of a case I knew extremely well.

Q. So you safely established today that hoasca isn't the only thing in the world that can trigger psychotic events, but Congress has not chosen to prohibit all of these events on the basis of their safety? Has Congress done that?

* * * * *

[346]

Q. There are no or any adverse effects of hallucinogens. There are no studies or other evidence to support the idea that the adverse effects of hallucinogens are less likely to occur with shorter-acting hallucinogens; isn't that right?

A. Well, considering virtually the only research that has been done on ayahuasca was our research, there is virtually nothing else out there. The other class of hallucinogens, like LSD, mescaline and psilocybin, all last quite a bit longer.

Q. Well, DMT is a classic hallucinogen, isn't it?

A. Yeah, but I tried to—I mean my qualification was we are talking about orally-ingested classical hallucinogens. I think an intravenous or intramuscular or smoked hallucinogen is an entirely different phenomenon than an orally-ingested hallucinogen.

Q. There are no studies linking the potential for adverse effects to the route of administration, oral versus smoked or injected, are there?

A. Well, most of the literature addresses long-acting, orally ingested hallucinogens.

Q. I understand that, Dr. Grob. My question * * *.

* * * * *

[350] trained health professional, correct?

A. Well, to some degree that is correct.

Q. Some of the effects of hoasca that you have mentioned could be quite dangerous in the absence of a skilled maestre; isn't that right?

A. I believe the presence of a skilled maestre is a protective factor, yes, absolutely.

Q. And you might certainly be worried about the hypersuggestibility that is caused by hoasca in the absence of a skilled leader; isn't that right?

A. Yes.

Q. Now, you have said that you can only recall one, maybe two UDV sessions that you have attended as an observer without drinking hoasca, correct?

A. Yes.

Q. Most of the maestres that you have met personally have been in Brazil; is that right?

A. Yes.

Q. And you don't know all of the maestres here in the United States, do you?

A. Well, I believe I heard in court yesterday that there were three maestres in the U.S., and I believe I know two. I may know the third, but I am not quite sure who that is.

* * * * *

[361] Banisteriopsis. Outside of the UDV, ayahuasca could contain other substances, as well. And I have never done a formal study of other contexts.

Q. So ayahuasca could contain irreversible MAO inhibitors; is that what you're saying?

A. No, I am not saying that. I am saying it could contain other plants.

Q. But the other two reactions that occurred with ayahuasca, they happened because of reversible MAO inhibitors in the plants, correct?

A. Yes, yes.

Q. And you believe that for an individual who has been on SSRIs for a period of time and who takes ayahuasca, here is a significant risk of a serotonin syndrome?

A. Yes.

Q. And you have described the reaction that could occur as potentially lethal, correct?

A. Theoretically there is that potential, although—actually, Dr. Callaway and I debated that issue quite a bit. And the final version of our paper was toned down in that regard, although we did leave in that one statement. So potentially, there is always that possibility.

Q. And this is an article that you remember * * *.

* * * * *

[376]

Q. Plus the hoasca?

A. Right. But these are very low concentrations of harmala alkaloids. I really don't think it's relevant.

Q. The UDV has been very important to you in your work, hasn't it?

A. Yes, it has.

Q. You couldn't do the project you did in Manaus without their cooperation, could you?

A. That is correct.

Q. And you currently have an ongoing project for which you require their cooperation?

A. Yes, I do.

Q. And there are other projects you would like to do for which you would need the UDV's cooperation; right?

A. Yes.

Q. Jeffrey Bronfman has funded some of your work, hasn't he?

A. In part.

Q. He is currently making a substantial contribution towards the research project you are doing with ayahuasca, correct?

A. Yes.

Q. Over the years, you have developed [377] friendships with people in the UDV, correct?

A. Yes.

Q. And you and Jeffrey Bronfman are quite friendly, correct?

A. Yes.

Q. And you have told us you have participated in UDV sessions where you have consumed hoasca?

A. In Brazil.

Q. You're not a fan of the war on drugs, are you?

A. No, I am not.

Q. You believe that it has been a very destructive phenomenon on elective freedom in this country and on the lives of countless individuals; is that correct?

A. That is correct.

Q. You believe that it has, in a steady, consistent manner, corrupted our judicial and law enforcement institutions?

A. That is very well put.

Q. And you would support the—they are your words, Dr. Grob.

A. Yes, I know.

Q. And you would support the decriminalization of marijuana, correct?

[378]

A. Decriminalization of use of marijuana.

Q. Of individual use and possession of marijuana?

A. Yes.

Q. And you would support the decriminalization of individual use and possession of hallucinogens, wouldn't you?

A. Well, the short answer would be yes.

Q. And you would personally consider it unjust if the government were 'to prevent the UDV from participating in its religious ceremonies; isn't that true?

A. Yes.

MS. GOITEIN: That's it for me.

THE COURT: Okay. Any redirect examination?

MS. HOLLANDER: Yes, sir.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MS. HOLIANDER:

Q. Dr. Grob, I would like to clear up a few things. You were asked your definition of hallucination. You were also asked whether these—whether DMT, hoasca, et cetera, are hallucinogens. And I want to ask you if you agree with * * *.

* * * * *

[379]

Dr. Ungerleider—we seem to be quoting him a great deal—Government's Exhibit EEE, when he says, "The label 'hallucinogen' actually is inaccurate because true LSD-induced hallucinations are rare. What are commonly seen are illusory phenomena." Do you agree with that?

A. Yes, I agree with that.

Q. So the fact that this collection of substances are called hallucinogens, does that mean that you always get hallucinations from them?

A. No, absolutely not. True hallucinations are very rare.

Q. You were also asked about the DSM-IV and what are commonly referred to as flashbacks, which I think in the DSM are called—you have to remind me what they are called.

MS. GOITEIN: Persisting perceptual disorders.

MS. HOLLANDER: Thank you.

Q. (By Ms. Hollander) Persisting perceptual disorders, those are what are commonly known as flashbacks, are they not?

A. Yes.

Q. The same thing?

A. It's the more modern term used.

* * * * *

[381]

A. Yes.

Q. And secondly, my question:

"And he found some long-lasting psychopathology, correct, in vulnerable individuals, correct?

"ANSWER: He found—he was looking primarily for changes in the visual system consistent with the development of what are called flashbacks in users of LSD, and he did find changes like that. He wasn't looking for psychopathology per se.

"QUESTION: Flashbacks to your knowledge have not been associated with any other hallucinogen besides LSD?

"ANSWER: Not that I know of.

"So you agree with me that flashbacks are associated with LSD, but there is no evidence that they are associated with any of the other hallucinogens?

"ANSWER: They haven't been shown to be associated with the other hallucinogens, but according to what Abraham found, you know, flashbacks are on one end of the continuum of more subtle changes in visual psychophysical parameters that don't necessarily—I mean, that are * * *.

* * * * *

[386]

THE COURT: Go ahead, Ms. Hollander.

MS. HOLLANDER: Thank you.

FURTHER REDIRECT EXAMINATION

BY MS. HOLLANDER:

Q. Do people hallucinate on alcohol?

A. That can occur.

Q. Is it because of psychological stressors?

A. Well, I mean that is a component. But there is also—can be a physiological component with alcohol hallucinosis.

Q. Is DMT—in addition to being found in plants and being made synthetically, where else is it found?

A. It's—it can be found in the brains of all mammals. In fact, all of us in this room possess—contain DMT in our brains.

Q. So is this the same DMT, the same molecule?

A. Yes.

Q. The study that you did, the hoasca project, was Jeffrey Bronfman the primary funder of that project?

A. No, he was one of the three funders.

Q. And where did the major amount of money come from?

[387]

A. From the Rockefeller Foundation.

Q. Do you know what it costs to—answer this if you can—to do a whole FDA study, controlled study? Do you know what it costs the drug companies?

A. Millions, tens of millions.

Q. Dr.—did you want to—

A. Well, you know, as a follow-up to your question, I should say that our study was—we were funded in the range of about, I believe, all total, $50-, $60,000, about $60,000, I would say. So you know, incredibly less than what the—you know, your reference to pharmaceutical products.

Q. You were asked to compare smoked DMT onset and intensity to hoasca?

A. Yeah.

Q. And you were also asked to compare LSD to hoasca?

A. Yes.

Q. And let me ask you about the other hallucinogens. Can you compare the onset and intensity of psilocybin mushrooms to hoasca?

A. The onset?

Q. Right.

A. About the same, 45 minutes to an hour.

[388]

Q. And what about peyote or mescaline?

A. I would guess about the same, about an hour.

Q. Are other hallucinogens naturally produced in the human brain?

A. No.

Q. We have talked a long time about serotonin syndrome. Even though you wrote the article and you considered that there is some risk, does the fact that the UDV is now screening and monitoring, does that have any effect on that risk, in your mind?

A. Well, you know, I have been very impressed with the diligence with which the UDV has, you know, looked to and screened for this phenomenon, so I would say certainly it is reducing the relative risk.

Q. And even with what you and Dr. Callaway wrote, are there very many people dying of serotonin syndrome in the United States, as far as you know?

A. You're talking about with pharmaceutical products?

Q. With any products.

A. The review article we looked at earlier mentioned one. I am aware of one other in the literature. So virtually, you know, it's a very [389] very, very low number, and those were pharmaceutical drugs.

Q. Now, you mentioned earlier that over-the-counter substances that contain dextromethorphan, like Nyquil or St. John's Wort, can also precipitate a serotonin syndrome?

A. Yes.

Q. Do people get screens before they buy those in the grocery store?

A. No, not at all.

Q. Do you know whether grapefruit juice, people consuming grapefruit juice, if they consume certain—or are taking certain medications, whether that can be fatal?

A. Well, it can represent a very serious problem, and you know, fatal outcome is a potential. And the reason being that grapefruit juice inhibits a particular metabolic system, the P-450 system in the liver, and will inhibit the metabolism of drugs that are also metabolized at that specific site. I would say most patients or most individuals on medication are not aware of this connection or risk.

Q. And are you aware of the medication Procardia?

A. Yeah.

[390]

Q. And that is used for what, for blood pressure; is that correct?

A. Yeah, right.

Q. Does Procardia affect the P-450 site?

A. It's metabolized, I believe, as a 2-D6 part of the P-450 system.

Q. But 2-D6 is part of the P-450 system, correct?

A. Yes. Right.

Q. So if someone were to eat grapefruits or drink grapefruit juice who is taking Procardia, that could cause a severe reaction?

A. Yeah, that could be a problem. You would have a lot—I mean if you could take drinking a lot of grapefruit juice, you would not be clearing the drug. It would not be metabolized.

Q. In your opinion, is the fact that the UDV is—well, let me ask—is the UDV out front on an issue that other people, other individuals and health professionals, need to know about?

A. I would say specifically in reference to the potential for serotonin syndrome, absolutely. You know, I think—again, they have been very diligent, you know, in informing people of relative risks. And so I would say to a far greater degree [391] than you will see virtually anyplace else.

Q. Will this benefit other people outside the UDV, this general knowledge?

A. What, knowledge of potential—the problems with potential medication or actions causing serotonin syndrome?

MS. HOLLANDER: Yes.

MS. GOITEIN: Objection, calls for speculation.

THE COURT: He can answer it if he has a basis for answering it. You may want to establish that.

A. Well, sure. I believe individuals taking combinations of medication where there is a risk for serotonin syndrome would be—you know, it would be a great advantage to them that they be informed of these potential risks if they were provided the kind of information that the UDV provides to its membership.

Q. (By Ms. Hollander) And in fact, is it beginning to show up now in the literature, including Government's Exhibit CCC, which was the article on serotonin syndrome and medicine?

A. Yes. I would say in the last few years, there is growing awareness of this phenomena. So * * *.

* * * * *

[400]

DIRECT EXAMINATION

BY MS. HOLLANDER:

Q. Would you state your name, please.

A. Glacus de Souza Brito.

Q. And what is your profession?

A. I am a doctor.

Q. Do you have a private practice, or do you work for the government, or both?

A. My area is sanitary medicine. My specialty is epidemiology and diseases that are preventable by vaccination. In addition, my public health work, part of the work I do is as a clinical medical doctor.

Q. Do you work for the government of Brazil?

A. Yes, I do.

Q. And is your public health work with the government?

A. I work for the government, for the state of Sao Paulo. I also am currently working with the Health Ministry for the National Scientific Health Committee. And I also do consulting work for the World Health Organization. This is in relation to an immunization research project my country.

Q. Now, the Judge has your CV, so I am not going to go through it anymore, except that is there [401] anything that is not on your CV that you are currently involved in?

A. I was recently consulted by the Centers for Disease Control in Atlanta to publish an unpublished research paper of mine which was presented as an oral

presentation in a World Health Organization meeting and also at the Centers for Disease Control in Atlanta. It's turned into a world reference, and it's going to be published next month in the Orientations for the World Immunization Project.

Q. What is the subject of that paper?

A. Hepatitis-B and HIV transmission risks with vaccination procedures.

Q. This might be relevant if we all have to be vaccinated for smallpox?

A. It could be.

Q. Are you also a member of the UDV?

A. Yes, for 19 years.

Q. Are you a disciple, or what is your position in the UDV?

A. I have been a member of the maestre cadre of the nucleo for 13 years.

Q. Do your co-workers in the government where you work, in the ministry, do they know you are a [402] member of the UDV?

A. Yes. I told that I was coming here to the President of the Scientific Committee. This would be the Brazilian Government Scientific Committee. I told them I was coming here to participate in this trial which had to do with the use of hoasca in the United States.

Q. Are there other medical professionals in the UDV?

A. Yes, there are.

Q. I would like to draw your attention to what is on your table there, Plaintiffs' Exhibit No. 65. Is this a chart that you prepared?

A. Yes.

Q. Is this an accurate representation of the numbers, the percentages of health professionals in the UDV?

A. Yes. Proportionately, it does.

Q. And what does it say at the top? It's in Portuguese. Can you read the Portuguese?

A. "Approximate Percentages of Distributions of Health Professionals that are Members of the UDV."

Q. Now, it says here—

MS. HOLLANDER: I would like to move this [403] into evidence, Your Honor.

MS. GOITEIN: No objection.

THE COURT: Okay. It will be admitted.

Q. (By Ms. Hollander) So what percent of the total membership of the UDV are health professionals?

A. We have some new updated data. We have 275 degreed health professionals.

Q. According to this, you have 15 psychiatrists. And so we can make a reference, when you say "psychiatrist" in Brazil, do you mean somebody who has —well, tell me what that means in terms of a person's schooling.

A. They have to have a university degree in medicine and resident—have to be a resident doctor in psychiatry. There are some that have completed Ph.D.s and work at the universities.

Q. Are you familiar with the requirements to become a psychiatrist in the United States?

A. No.

Q. Let me ask you about the physicians, the several specialties. You have 69. Can you tell us what some of their specialties are?

A. We have got eyes, ears and throat specialists, geriatric specialists, pediatricians, [404] surgeons, and other degreed medical health professionals.

Q. Are these mainstream physicians? Are these people who work—do some of them work in hospitals in Brazil?

A. Generally, that is true. Most of them or a good fraction of them do work in hospitals.

Q. And to become a physician in Brazil, what schooling is required?

A. We have got high school. Then you have got six years of university, plus two years as a resident.

Q. Now, the main thing that I want to discuss with you is the Medical and Scientific Committee of the UDV. Let me start—and that is what we have been referring to as DEMEC; is that correct?

A. Yes. That is simpler.

Q. What is DEMEC?

A. DEMEC it is a Department of the General Director of the UDV.

Q. And when was it initiated?

A. What—after, in 1986, there was temporary suspension of use of the plants due to an order of the Health Ministry. We perceived a need for there to be a

dialogue agency between the church [405] and the government.

Q. At the time that the government temporarily suspended it, was it just one plant or both plants?

A. Both plants were suspended inadvertently.

Q. And what—so am I correct that you wanted to—tell me if I am wrong. You wanted to convince the government of Brazil that the hoasca tea was safe?

A. Until that time, there was very little scientific knowledge to be had in that area. What it boiled down to was that a group of doctors came to the realization that this, after having tried the tea themselves for purposes of spiritual effect of mental concentration—but there was nevertheless a substance which could interact with the human body—we felt a need to know as much as possible about its effect on the human body.

Q. So what does DEMEC do?

A. Basically what we do is we follow the scientific literature in that area. We also act as kind of a facilitating agency, for instance, for universities, other knowledge seeking groups that want to perform research involving these plants. And also to provide assistance to the spiritual [406] leaders of that religion.

Q. When the government suspended the use of the plants, did the doctors at that time—strike that. Were the doctors involved in the work that the government did when the government went around to the various nucleos and determined—made their own investigation?

A. What we did is we gave some personal testimony before the justice ministry. We brought in some people who were 80 years old who had been drinking the tea

for 30 years and were very healthy. But the government itself handpicked its own research team. And this went around and visited the most important religions that make use of this tea in Brazil, mainly to do an evaluation of the social risk that these religions might pose or social hazard these religions might pose to society.

Q. Did the government investigate or actually drink the tea at the sessions?

A. Now, at the UDV, these government investigators did take part in the preparation of the tea and also in some sessions. I cannot speak for what they did with other religions.

Q. But they participated in the UDV sessions and actually drank the tea is that correct?

[407]

A. Yes.

Q. And then afterwards, when the government permitted the use of the tea again, why did you continue DEMEC?

A. At that time, we noticed that there was a genuine need for deeper knowledge of this sort, and there was not a whole lot of information to be had in the literature. So we decided that we would try to fill that void, as it were, and learn, try to learn some more about the effects of all of these things.

Q. Do you have a position in DEMEC, a specific position title?

A. When DEMEC was first formed, I was the appointed scientific coordinator up until 1995, and that is

when I took over the general director of that department.

Q. And does the—do the doctors meet on a regular basis?

A. There are three committees within the structure of the department, the mental health committee, clinical, and the scientific committee. We have had three conventions and we have an Internet chat group through which we remain in constant touch. And we are planning another [408] convention for next year.

Q. What are the conventions? What is the purpose of the conventions?

A. The first convention that we had in 1981, the purpose of it was to update our knowledge regarding all the different aspects of the tea. And we invited various experts and specialists for that. So in 1993, we had additional information brought in. We had general health results that we had presented and also the preliminary results for what we call the Manaus Research Effort. We brought in specialists, university specialists that were not linked to the UDV, as experts and critics. And then in 1995 we had the presentation of the final results of the 1993 research. And this was for—there was an open conference at which more than 900 people attended.

Q. I need to see if we need to make a correction. Was the first conference in 1981 or 1991?

A '91, '91, '93 and 95.

Q. And are you planning another one?

A. We are planning one for next year.

Q. And what will its subject be?

A. It's basically an updating effort to [409] gather all the past experience we have had, and we may run through some more of this during these proceedings. But what it is, it's also going to include the research that we have been doing on adolescents.

Q. Who wrote the DEMEC documents that we have?

MS. GOITEIN: Objection, I suppose that is a little vague. We have DEMEC documents that are notifications. Could you specify?

MS. HOLLANDER: Sure.

Q. (By Ms. Hollander) I meant the DEMEC guides that are Plaintiffs' Exhibits 58 through 64.

MS. GOITEIN: Objection, relevance.

A. So which ones are these? The title—if you will just rattle off the titles, I will tell you who did them.

Q. (By Ms. Hollander) I am going to ask you about each one anyway. Plaintiffs' Exhibit No. 58 is the Orientation Guide to Help Health Professionals in Assisting the Master Representative Regarding Mental Health Considerations?

A. That was a Mental Health Commission coordinated by Dr. Navez. And he took his Ph.D. in psychiatry at the State University of Campinas.

[410]

Q. Now, you went over these in your deposition. I don't want to repeat that in great detail. But when you say, "Orientation Guide," what do you mean? What is the purpose of Document 58?

A. These are basically guidelines for the leaders directing the various nucleos, and these are orientation

documents for the health professionals, the people in charge of each nucleo and the health professional who is representing the DEMEC to each one of these nucleos. So these are guidelines to identify persons that are susceptible or might be vulnerable to mental health events, and also to issue alerts as to certain drugs or substances that might interact with the substances that are found in the tea, and also to set down guidelines for reporting any mental health-related incidents or events so that they can be well recorded and so that they can also be better investigated on—better investigated afterwards and then the conduct followed up on.

Q. Do the maestres who are screening new disciples have these orientation guides?

A. All of these materials are presented orally at the maestres' meetings in Brazil and also meetings of officers of the organization.

[411]

Q. Have you ever—in your role as a maestre, have you ever screened a prospective member?

A. No. The person who does that is the representative maestre. The representative maestre engages the individual in an informal conversation as provides for in our culture, in accordance with our culture. Present also at this informal conversation are other maestres or counselors. So I have participated in many conversations with people who are interested in getting to know the tea.

Q. Are any of the representative maestres also physicians?

A. There are some. Most of them are not physicians nor even college degreed.

Q. In the case of someone who—a representative maestre who is also a physician, when he is screening a new member, is he doing that based on his knowledge of the provisions as a maestre or his knowledge of medicine?

A. Basically what he asks is he uses knowledge that exists within the church itself to try to identify the level of commitment or interest that the individual has. So really it boils down to a screening to determine just how serious this [412] individual is about finding a spiritual path.

Q. In your opinion, do the maestres need to be physicians to screen people, in your opinion as a member—a maestre of the UDV?

MS. GOITEIN: Your Honor, I—

THE COURT: Excuse me. I'm sorry, did you have an objection?

MS. GOITEIN: I just realized I was interrupting. I wanted to make sure the witness heard the translation.

My objection, Your Honor, is we are moving into expert testimony and I wanted to make sure for the record that I renewed my objections to this witness being qualified as an expert for the reasons set forth in the motion that I filed.

THE COURT: Okay. Fine. State the question again so we get back on track.

(The last question was read by the reporter.)

A. UDV has been around for 40 years, and the guidelines for these evaluations have existed since its inception. And it really was founded among the

Cablocos residents of the Amazon who—Cablocos in the Amazon region, very few of whom know how to read and write. So the cultural origins of the religion never did require a lot—in fact, any educational [413] background at all, just spiritual improvement and knowledge.

Now, more recently, in the great urban centers, there we have had degreed professionals and health professionals and others in a position to actually gain some of the information and develop knowledge about this. So there is no need.

Q. No. 59 is the list of drugs that might possibly interact with the hoasca tea. Is this list updated on a regular basis, and how do you determine which drugs go on it?

A. Every year in Brazil there is a published list, updated list of chemical and commercial names. So we perceived a need to update that list every year once the medicine guide itself is updated and published.

Q. I want to ask you about the document that's numbered 62, the, "Use of the Hoasca Tea by Pregnant Women."

A. Yes.

Q. We don't have to go through all of these because the Judge has them and can read them. But why is this an issue, pregnant women? Why is this a specific concern?

A. Basically it's that empirically we [414] volunteered pregnant women using the tea. And never did we observe any kind of an adverse interaction or effect that we could identify, nor could we see any effect made —in the fetuses.

Now, from the outset, the founder, Maestre Gabriel, said that pregnant women would be sensitive and should therefore be given smaller portions of the tea. Now, according to data that we have in Brazil, there is, generally speaking, a 15 to 30 percent spontaneous abortion rate among women in the first trimester in the general population. So then, again, there was the coincidental risk that we perceived, which would be that during, say, sometime after—a few days after some woman who is pregnant taking the tea could maybe have a miscarriage so that the possibility that this might be construed or misconstrued as having been caused by the tea when, in fact, it was just a random occurrence was something that we were interested in. So Maestre Gabriel himself said that if the good Lord provided little of something in this world, it was a care which was what there was a shortage of, because you just can't be too careful.

So we recommended and issued a guideline that women who are just beginning to partake of the [415] tea, that they avoid this during the first three months of pregnancy, and similarly, also towards the end of the pregnancy, in order to minimize the chance of a premature birth. And our primary concern was that this not—this relation not be blamed on the tea.

Q. Do you have children?

A. Two.

Q. How old are they?

A. Sixteen and two and a half.

Q. Did your wife drink the tea which she was pregnant?

A. My wife has been drinking the tea since she was ten years old. She is physically very accustomed to the tea. So the two children that she bore, she drank the tea the whole time, and these are intelligent and wonderful kids.

Q. Now, during the course of this litigation, has the government asked you to provide all of the DEMEC documents regarding possible psychological occurrences in relation to the tea?

A. Yes.

Q. And have you provided those to the government?

A. All the available information that we [416] have, we provided.

Q. And what kind of information do you collect?

A. Basically what we are doing is collecting all of the notifications, investigations and monitoring activities that are related to what we would call psychiatric emergencies. This is clinical monitoring. And we are also doing some monitoring of long-time users who also use serotonin and reuptake inhibiting drugs.

Q. The documents that you provided, do you have a copy of them there? Those are the documents you provided?

A. Yes.

Q. When did you start—when did DEMEC start keeping these kinds of records?

A. We basically saw the need to implement some such system beginning in 1996. So we did cover some cases that were in the UDV records or that had been cases of note that attracted attention in the previous

five years. And as of that date, we tried to assemble a collection of cases, reports, and notifications.

Q. Why? What happened in 1996 that made you decide that you should keep these records?

[417]

A. Well, in 1995 there was a big conference, and it was at this conference that we realized that we ought to have this kind of information because these records could be important to improving our knowledge as to what could occur in the areas connected with the hoasca tea, and if someday someone were to ask us for some monitoring, we would at least have some information to offer.

Q. Did you start keeping the records because you thought that you were worried that the tea was unsafe?

A. Because basically there are, in the literature, questions raised about the possibility of psychoses in connection with some of the alkaloid substances that are found in the tea. And we knew that occasionally, rarely, this happens in the milieu of people who use the tea. Although from an epidemiological standpoint, this does not worry us very much. In any particular case, it merited some special attention.

So what we wanted to know is whether, in the UDV, these types of occurrences occurred with less frequency, about the same or more frequently than they do in society in large. This is for our information and so that we can better keep control.

[418]

Q. Now, how do you collect the information?

A. Generally speaking, psychology and psychiatry, in general, are defined as psychoses, are marked behavioral changes that occur in a person. And these are from the effective relationship viewpoint and also perceptually, the relationship between the inner world and the outer world and with other people. And this is noticed by laymen. And this, of course, attracts the notice of people within the nucleo, and the representative maestre finds out when this is going on with a given disciple. This is primarily because he is representative along with the counselors and the other maestres from groups of some 10, 20 people who monitor a company, groups of 100, 150 people in each nucleo. So this observation is easy to make and can be produced as evidence. So even if there is a medical professional within one of the groups, the maestre, the representative maestre, his tendency is to ask that individual for an evaluation. And/or they will also make telephone calls to us at DEMEC and ask us about this or that event.

So the Mental Health Commission provides some guidelines for the local health professionals. And if there is not one at that location, typically [419] there is one somewhere in the region to provide necessary guidance in the investigation and in the clinical studies, therapeutic and clinical orientation.

Now, sometimes people will look up a psychiatrist who is in no way connected with the UDV. So the UDV health professionals will try to establish contact with this outside health professional, provide them with information about the tea, and also try to follow the diagnosis and what there is by way of therapeutic work done.

Q. Now, I wanted to get a copy of this.

MS. HOLLANDER: Just a minute, Your Honor. That's just the Court's copy, and I wanted you to have it from—

THE COURT: Which exhibit number is this?

MS. HOLLANDER: It's Defendants' Exhibit—there are six I's. This is the English version, and the witness has the Portuguese, which he will have to give back.

MS. GOITEIN: So in his notebook, he already has the Portuguese version?

MS. HOLLANDER: I'm not sure what he has. That's why I'm giving that back.

MS. GOITEIN: He has the English version.

[420]

MS. HOLLANDER: Does he have exactly this? That's the English version.

THE COURT: It's English.

MS. HOLLANDER: All right. Thank you.

Q. (By Ms. Hollander) Dr. Brito, these seem to follow a form, and I am looking at No. 1, the summary of Case No. 1. And it says that the professional in charge is Dr. Navez, a psychiatrist; is that correct?

A. Yes.

Q. Where did—how did Dr. Navez, to use this one as an example, collect this information? In other words, did he speak with this individual? Did he get this information from the family, from the representative maestre? How was one of these created?

A. In this particular case, it was one of those cases that was recovered from before the notifications were

instituted. So we had the prior record, and this was brought up—this was entered and brought up to date. And the individual that this relates to is still a member of the UDV, and we have then engaged them in conversation to elicit more information.

Q. Does a psychiatrist actually speak with [421] the individual involved?

A. Yeah. All of these cases, these notified cases, had a psychiatric evaluation. There was, in one case, an outside psychiatric evaluation made, but it was possible to monitor that person for a good time all the way up to the present.

Q. Do the UDV psychiatrists ever consult with psychiatrists who are not members of the UDV if they are treating the individual?

A. Treating?

Q. Treating the individual as a doctor treats—

A. I didn't understand the question.

Q. If an individual has a psychiatrist who is not a member of the UDV, do the UDV psychiatrists and the non-UDV psychiatrists ever discuss the case of a particular individual?

A. Well, either a psychiatrist or psychologist tries to establish contact with whichever professional is taking care of that case.

Q. Are there individuals in the UDV who continue to have psychiatrists who are not in the UDV but know that individuals are drinking the hoasca tea?

A. I'm sorry, the question is not all that [422] clear.

Q. Let me try to make it clearer. Some of these individuals who are listed in these case studies are still members of the UDV; is that correct?

A. Yes. Some of them, yes.

Q. Do some of them have continuing psychological problems that need treatment?

A. Yes.

Q. Do they get that treatment from the psychiatrists in the UDV or psychiatrists outside the UDV?

A. In practically all cases in which treatment is sought, they're at least monitored by psychiatrists that are UDV members. I would almost have to thumb through each one of these cases to see if, in any one of them, there is an outside psychiatrist doing any monitoring. Because all of this documentation is coordinated directly by the Mental Health Commission, and I trust them implicitly, but I do just supervise.

Q. Does the UDV discourage people who have psychological problems from consulting psychiatrists outside the UDVDV?

A. No way at all. It's an individual choice [423] that must be respected.

Q. So if an individual has a psychiatrist who is outside the UDV, are you saying that the case will also be monitored by a psychiatrist inside the UDV?

A. What generally happens is when somebody looks for an outside psychiatrist and this person doesn't have a whole lot of understanding or knowledge about this tea and its effects, then there is no assurance that they are going to be able to give therapeutic orientations to

the person, inasmuch as they don't really understand the effects of the tea.

Now, on one case that I remember very specifically, the psychiatrist advised that the individual again continue to partake of the hoasca tea. But as I said, that is up to each individual to choose, and we have to respect their choice.

Q. Do the outside psychiatrists who don't know very much about hoasca tea ever call the UDV psychiatrists to try to get more information for their patients?

A. They generally form their own opinions.

Q. Of these 24 cases, was it—in the opinion of DEMEC, was the tea a contributing factor [424] in all of them?

A. Okay. What we have is a classification of five individual points. For instance, in one we have situations in which the tea acts as a trigger for people who don't have any prior known mental health occurrences. Then the second one is in which the tea is perceived to act as a resharpening trigger for somebody who has a past occurrence history.

Now, then, another case is one in which the tea is believed to have acted as kind of in a supporting role, but that there were other significant marking circumstances or events in the individual's life. And then the fourth category is one in which the use of the tea doesn't have any relation with the psychiatric or psychological event observed.

And then the fifth one in which there is some question—that there is still uncertainty about the

correlation between the event and the use of the tea and it's being investigated further.

Q. In how many of these can you say has DEMEC reached the opinion that the tea was not a cause at all?

A. Okay. Out of these 24 cases, we have one [425] in which the tea acts as a trigger with no prior occurrences, and then we have seven in which the tea acted as a resharpening mechanism for something that—for a prior mental condition that was not identified, but it was identified during the course of the investigation by the psychiatrist.

In five of them there was a participatory relationship, but not one that was very important. And out of those 24, there were 11 in which there was no relationship whatsoever between the event and the use of the tea.

Q. So if—and when did you suspend the use of the tea? 1996; is that correct?

A. These are all the cases, including the retrospective cases and the ones that we started compiling in 1996, all the cases. In this particular group, we have got 11 retrospective cases and then 13 that were compiled after 1996.

Q. But you have approximately 7,000 UDV members who drink the tea twice a month; is that correct?

A. Yes, that is right.

Q. So that would be—is that about 200,000 drinks of tea a year?

A. Yes.

[426]

Q. And you have been keeping these records, let's say, since 19—for six or seven years?

A. Yes.

Q. And out of that time, you have a total of 13, correct?

A. I would say that this corresponds to a uniform notification system for the entire country. But I believe that this correlation corresponds to the three most populated regions in the country. And in those regions, yes, all the cases are compiled. So we take this to be a pilot study or a pilot program to be reproduced in the rest of the country efficiently. So instead of 7,000, you should consider a subgroup of 1,500 people observed in these cases, and I think that would be more accurate.

Q. Is this 1,500, people drinking the tea twice a month over a period of five or six years?

A. Yeah, on average, three times a month.

MS. GOITEIN: Your Honor, I am going to object at this point to the mathematics. One of the exhibits that plaintiffs have put in as an exhibit says that 751 people were monitored for three years from '95 to '98. So we have evidence in the record that it was not 1,500 people for three of those [427] years anyway.

Q. (By Ms. Hollander) Well, let me ask you this: In the general population in Brazil, do you know how many—what the percentages are of people who have any kind of psychosis from all the myriad of other triggering events that we are aware of?

A. In four published studies, we have an incidence that ranges from 0.5 percent to 5.3 percent. So the average would range between 1 1/2 to 2 percent.

Q. In the whole population at large?

A. Yes.

Q. And you're continuing your study to see—in other words, you are continuing to collect this information?

A. The information compiling is continuous, but now we are also embarking on trying to improve data collection in the rest of the country.

Q. Now, I want to—I may go back to that, but I want to move to the question of serotonin syndrome, because part of Defendants' Exhibit IIIIII involves a different kind of document, correct?

A. Yes.

Q. And what is that document? What are those documents?

[428]

A. I think I know what you are talking about.

Q. The document is entitled, "Controlled Medication Use Notification Form." Are you familiar with those?

A. This is a program that monitors people who have been UDV members for some time and who have begun taking these types of medications by medical prescription. Because when Dr. Charles Grob issued this recommendation with his publication, we took the recommendation to heart, although we do consider this a theoretical risk. And by then, we were already observing that there were a number of people who were already taking those types of medicines, and yet there were no adverse events related by or observed in those people. So we didn't really feel authorized to suspend their taking the medication or to suspend their drinking the tea.

One of these people was a relative of mine, so I closely monitored this person. So we began collecting, gathering this information. And what we are doing is putting in place a systematic method of collecting these data so that we have a large enough number of observations to give us some new scientific knowledge. And I have been exchanging information about these observations with [429] Dr. Charles Grob. But we do keep up the orientations, the guidelines for people that are just coming to try the tea for the first time. And that is why we have this list of medications. It's to act as a kind of a guideline for health professionals and to be used during the informal interview or screening interview.

I would like to add one thing here, that during this informal interview that we have with the representative maestre, there are four informal questions that we suggest be made, that he make during this conversation that he holds. If the individual has any kind of a health problem; whether the individual has ever had any kind of important illness or been admitted to a hospital or has been taking any kind of an important medication or has ever done so; and if they are taking any kind of a controlled medicine, because all of these drugs that are on this list are prescription drugs.

Q. Now, it looks like—

THE COURT: Let me ask Ms. Hollander, what is a good breaking point for the evening? It's almost 6:00.

MS. HOLLANDER: I think I am going to be finished with this little group in about just a few * * *.

* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CV-00-1647 JP/RLP

OCENTRO ESPIRITA BENEFICIENTE
UNIAO DO VEGETAL, ET AL., PLAINTIFFS

v.

JOHN ASHCROFT, ET AL., DEFENDANTS

Motion Hearing
Oct. 24, 2001

BEFORE: THE HONORABLE JAMES A. PARKER
United States District Judge

APPEARANCES

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[435]

THE COURT: First we will try to get a handheld microphone, so that the interpreter can use that while interpreting. Let me explain today's schedule. We will work until 11:30. At that time, I have to chair a committee that is interviewing finalists for our chief of pretrial services position, and that will take about two hours, so we will break from 11:30 until 1:30. Then we can work from 1:30 until 6:00 this evening.

I don't think we should go beyond 6, because the court reporter, as I understand it, has to prepare daily copy of the transcript, and he is staying up past 10:00 just working on that, without going to dinner. So I need to give him a break and allow him some time to do what he needs to do to get ready for the next day. So, that will be today's schedule. We will work—we will be in court from 8:30 until 11:30, then I will have to take about two hours to do those interviews, and we will resume at 1:30. Okay. Are you ready to continue? Dr. Brito's testimony? Let's see, do we have the interpreter? Okay. Yes, we do.

Your Honor, I have one very brief thing to put on the record. Yesterday, the government objected to Dr. Grob's qualifications to testify [436] regarding the health effects of peyote and one of their grounds was that he was not qualified as an expert in that field. In response to that, we found and had him testify about an article that he had written about peyote. We then included a quote from Karl Menninger and asked if he would rely on that quote. The government objected to that, saying that that quote came from a reference in Dr. Grob's CV that they had had for some time, but that in addition, the quote from Karl Menninger came

from another article by Robert Bergman entitled "Navajo Peyote Use: Its Apparent Safety."

I would just like the record to be clear, and I will provide one to counsel, sorry I didn't do this before, that the particular article that the government is complaining about was produced by the government to the defense—I mean by the government to the plaintiffs. It is our Bates number US.00923, and it was in response to our request for production number 9. So, the government knew about it quite recently.

We will have, I hope, tomorrow a brief to the Court explaining why, in our view, the government was clearly on notice that the health effects of peyote would be an issue—

[437]

THE COURT: Okay.

DIRECT EXAMINATION (Cont.)

BY MS. HOLLANDER:

Q. Dr. Brito, we ended by talking about the number—we were at the point yesterday where you said that 13—you had reports of 13 cases that could be as a result of drinking hoasca tea, correct?

A. The psychiatrist, to be honest, only believed that eight of those cases were triggered by the tea itself.

Q. But if we include the others that might be triggered, we still get 13; is that right?

A. The standard of contribution was smaller, and the actual life of the individual is what took the brunt of the contribution for the disturbance.

These were depression cases linked to which there may have been some psychotic episode, but the

overriding factor here was the depression itself, not the tea.

Q. Let me go on. You said that this came from a group of 1400 people, and the government objected that this came from a group of 751 people. Can you explain why there seems to be a difference in numbers?

[438]

A. The data the government had was data that was acquired from a presentation at a Brazilian psychiatric convention. At which we had a presentation of a pilot study for a region.

And since then, we have about, on average, 300 people a year who are newcomers to the tea itself. And so, these people who come and try out the tea, but only drink it once, are also included in the set of those people who have had exposure to the tea.

We have got notifications of people that have only drank it once. So, that is how we arrived at these 1400 to 1500 numbers is the total number of people exposed to any degree. So out of, say, 30 first-timers, only some four to half a dozen actually become UDV members.

Q. Now, taking the number 1400 for just one year, and ignoring the fact that this actually includes several years, what percent would 13 be of that 1400?

A. .9 percent.

Q. Now, you heard Dr. Grob testify that in the world at large, it's believed that approximately one percent of the population is schizophrenic. Do you agree with that?

[439]

A. Yeah.

Q. If you take this 1400 and spread it out over a period of years, obviously the percentage goes down, correct?

A. Yes.

Q. And if you spread it out and—so the most conservative approach would be .9 percent, but could one—and tell me if I am wrong, but could one also look at this another way and take into account the number of doses per year times five years? Would that be an acceptable way to look at it, or not?

A. Could you repeat that question?

Q. It would be .9 percent of 1400. Would it be fair to look at it another way and multiply that 1400 times drinking the tea twice a month times a year times the number of years that these have been reported? Would that be a fair way to look at this data?

A. That would be a different basis for evaluating the tendency for risk.

Q. Would that be a much lower percentage, obviously?

A. Yeah. We would have a number of these cases for every 250,000 exposures.

[440]

THE COURT: Let me interrupt for just a moment.

(The Court conferred with the clerk.)

A. So if we assume there are two point—on average, people take the tea two and a half times a month, then yes, we could use that to form a basis of the total number of exposures by multiplying it out, and

then use that to evaluate risk. So then we would have that number of cases by a quarter of million exposures.

Q (By Ms. Hollander) And of course, if we took the eight—the number eight that your doctors believe is a correct number, we'd also have a slightly lower percentage; is that right?

A. Yes, that is true.

Q. Now, in your declaration you said that the rate of psychotic episodes among UDV members is .73 percent, and in the DEMEC document entitled "Recommendations of the Mental Health Commission," which is now Exhibit 60, it says the rate is .86 percent. Can you explain?

A. The first one, when it was presented, included only adults. Then, when we compiled the document, we decided it would be best to also include teenagers or adolescents who had had [441] undesirable episodes.

Q. I want to ask you about the second half of the documents that are now Defendant's Exhibit IIIIII, which is the documents of the people you're monitoring for possible serotonin syndrome.

A. Yes.

Q. Those documents show a number of people taking the drug that we commonly know as Prozac; is that correct?

A. Yes. Some people, yes.

Q. And is it correct that they are all—in Brazil, do they have to take that under a doctor's supervision, or can you go into a drugstore and just buy the drug?

A. These are considered prescription, or controlled drugs.

Q. Can someone in Brazil get this prescription from a medical doctor, or just from a psychiatrist?

A. Either, or both.

Q. Now, what I would like you to do is explain —well, let me back up. Strike that. Are these, the doctors who these people are seeing, are they all UDV doctors?

A. No. As I said before, when the [442] recommendation was made that we not mix these medications with the tea, we discovered that there were a number of people that were already taking those medications prescribed by doctors that were no part of the UDV.

Q. Are psychiatrists in Brazil medical doctors?

A. Yes. They have to have a medical degree and residency in psychiatry.

Q. Now these documents have a list of questions for each individual, eight questions. How are those questions answered?

A. They were filled out by each individual user of that particular medication, assisted by a DEMEC health professional.

Q. And you have in front of you, that I left on the table there, a chart that you created just to assist you. Would that chart assist you if I ask you how many people answered each question?

How many of the people in this group are masculine? Men?

MS. GOITEIN: Counsel, do you have another copy of that document?

MS. HOLLANDER: I'm sorry. I thought I gave you one.

[443]

MS. GOITEIN: Oh, I have it. I'm sorry. Just continue.

A. There were seven men and four women.

Q. And can you explain what the second percentage on your chart is?

A. It's the date that explains the various in ages. If you would like, I could just go through and explain the whole document.

Q. That would be fine.

A. The age range ran from 19 to 57 years. These preliminary data were gathered from three different cities, from probably 16 different nucleos. And this is the list of the medications, and Prozac is the one that takes the lion's share of percentages. All of them are Prozac related, Prozac type medications.

Q. Which one on here, so we can identify it, is Prozac?

A. The thire one.

Q. The third one?

A. Yes. 36 percent on that one. The second table shows the time they have been using that medication, ranging from two months to two years. 6-1/2 months, average.

So, the first question is were all of [444] these prescribed by a doctor? Yes. Did you have any fainting spells during or within 24 hours of a session? No. And everybody answered no.

Did you feel excessively drowsy after a session? And four people answered yes, and we believe that that

is a variable thing; that it's an individual, from person to person, and it's not so much related to the medication.

So, did you have a mental confusion? One individual said yes. So we had a conversation in person with this individual to try to find out what this was. And so, the explanation was that during the effect of the hoasca, during the sessions, the individual related that he had gone over a bunch of different life paths, and then conflicting alternatives, and had been bogged by those. But then we understood that this was a pretty much usual thing, and not unusual to the tea.

So the question was, did you have any convulsions during or within 24 hours of the ritual? And everybody said no. Did you feel your heart rate increasing during or after the ceremony? Two people said yes, they had. This is a physiological effect that we observe the first hour and a half of the tea.

[445]

Did you have muscular rigidity during or within 24 hours after the session? And nobody—everybody said no.

Q. Excuse me, I need to go back, because we may have missed something in the translation. When you talked about the drowsiness, did you say that this happens with the same frequency with people who do not take the medicine?

A. This happens because typically the ritual is over with at midnight. People—afterwards they will go have a snack or go engage in conversation and go to sleep maybe 3:00 in the morning, so that the next day they are sleepy. So we don't take that as seriously as we do serotonin syndrome in our evaluations.

But there are other events that would have been weighed more heavily in our analysis and those were all negatives.

Therefore, we don't believe that we have grounds to counterindicate that medication or the use of the tea by these people, because they seem to have reacted quite well to it. So this is new knowledge that we are gaining. So, the theoretical risk that was presented by Charles and Callaway—so we have determined there are situations in which [446] that is not applicable.

So now we are concentrating our efforts in putting together some more rigid scientific information, more—with validity, in hopes that we will soon be able to share that information with other scientists.

Q. I want to ask you about your study, the hoasca project. In your opinion as an epidemiologist, what can you conclude from that study?

THE INTERPRETER: The interpreter would feel a lot more comfortable if we could break that in half.

A. The pharmacokinetic study was a huge step forward for science. It chose the quantity of the substances that exist there in the hoasca tea, their concentration in the blood, and the time it takes for them to be eliminated from the blood stream, from the body.

That had never been done before, and this study shows that the concentration and levels in the blood in the Callaway study shows that at the time of the peak effect of the hoasca tea, the DMT concentration is 80 nanograms. So, this is 4- to 8,000 times smaller than the doses used in the [447] Strassman study, in which DMT was injected into humans.

And this is analogous, also, to other studies that were done with harmine in rats. In addition to these data, it also showed the time of the effect, and the psychiatric evaluation conducted by three teams from three universities.

The data produced by Dr. Charles Grob, the data produced by the University of Sao Paulo, which is indeed a psychiatric evaluation, and this was done by the reference center for the World Health Organization for psychiatric evaluation in communities. It shows that these 15 individuals who have been drinking this tea for over ten years suffered no mental harm.

Q. In your opinion, Dr. Brito, as an epidemiologist and someone who works for the Brazilian government and the World Health Organization, would you feel it was necessary to conduct a double-blind controlled study to determine whether or not the sacramental tea that the UDV uses in its practice of its religion is harmful to someone's health?

A. Well, you have a number of examples of medicine. Bayer aspirin was sold the last century [448] in 1880, and the mechanisms by which it worked were discovered in 1960, and this was the most widely-sold medication in the world.

In the 1940s, the action of Lithium on the central nervous system was discovered by accident, and it is used without any aftereffects. So, it has been used without full understanding of exactly what it's doing to the brain.

And recently in the United States we have had an important example in my area, which is immunization. The Roto virus vaccine was released by the White Laboratories, where the double-blind results did not

show anything important. And this was approved by the FDA.

And then, when we began to use this on American children, the first children in the world exposed to this vaccine, then important effects were discovered, and even deaths in these children. And this was by observation.

And in the case of the tea we have got a century of experience in its use, and in the UDV itself we have got over 40 years of direct observation to our credit. And this is close observation, because the nucleos are small and the leaders watch their congregations closely.

[449]

And in the past 20 years, many doctors have participated in these observations, and the only hazard that we have observed has been these situations in which there are adverse mental reactions. And this is why we undertook to study this in a more scientific way, in order to have the greatest possible control, and minimizing the risk.

And I personally have been drinking this tea for 19 years with my family, and I also found people who have been drinking it for 20 or 30 years that are perfectly healthy. And in my professional work with the Pan American Health Association and the Brazilian Health Ministry, I travel all over Brazil. I visit nucleos, many nucleos in Brazil and, as it sits on a doctor, a lot of people seek me out, with, you know, silly or every day problems that occur in the general population. Nothing very different or special in that particular population.

So weight is given in science to observations made by professionals who have spent a good deal of time making their observations. So, we must take into

consideration the fact that we are not putting anything new into this population.

It is a tea, a plant infusion that's been used for a long time, and it has all this cultural [450] experience behind it. That is weight.

* * * * *

Q. Has the Brazilian government ever recognized the UDV as an organization that assists its members in the community at large?

A. Yes. In July of 1999 the UDV's Beneficiente Espirita Unaio was recognized as a federal public utility service, and this is a title, a certificate, if you will, issued by the Justice Ministry.

Q. Could you look, please, at Plaintiff's exhibit No. 66? And you have a copy there.

A. Yes.

Q. Dr. Brito, is that a copy of this newspaper article? Is that a copy that we made of this newspaper?

A. That is the Brazilian government official gazette.

Q. And what is it—

MS. HOLLANDER: I would like to introduce this, Your Honor, and I would like to introduce the copy. We gave one copy of the actual newspaper, which I have, to the government when we met with them two years ago. We are having trouble finding more originals. If the Court would accept a copy, we would like to keep our original, but I am happy * * *.

* * * * *

[459] * * * accompanied by financial papers, profit and loss sheets, covering that period, even though they—

regardless of whether or not they received any funding in accordance with Article V of decree Number 50.517 of 1961 and law Number 91 of 1935. And then the last just says that its effective as of its publication.

MS. HOLLANDER: Can you read who signed it? Your Honor.

THE INTERPRETER: It's signed by Marco Antonio de Ortega Maciel, that's M-a-c-i-e-l, and Josette Carlos Diaz.

THE WITNESS: This is the—the Justice Minister and the vice-president of Brazil.

Q. (By Ms. Hollander) Finally, Dr. Brito, does, in addition to the scientific work that the medical committee does, does the medical committee do any work on behalf of the UDV that involves people outside the UDV?

A. We have a health center which gives health assistance to low income people on the outskirts of the city of Sao Paulo, and this is a volunteer work. The medical department is constituted to help the spiritual leader in his functions.

And I could say the following. Just * * *.

* * * * *

[467] disturbances.

Q. That would indicated that there is some underreporting going on with your system, wouldn't it?

A. We understand that there can indeed be underreporting, in terms of what we are now implanting in the other regions, the specific region in which this pilot study was performed.

If there is underreporting, there is not much, because we have dug very many cases out of the past, and there is no such thing as a perfect notification system based on observation, on diagnosis, and in—the ability to gather up cases.

Q. So the fact that you are seeing a l0th of what you would expect to see, given the general population, to you does not indicated that there is a underreporting problem with this group; is that what you're saying?

A. There can be some underreporting going on, but there can also be something else. Within the safe context of the UDV, although there is a possibility for the tea to trigger some effect, the very context itself is helpful in the person's mental health.

Q. But you don't have any evidence to suggest * * *.

* * * * *

[470] * * * improved neuropsychological functioning of the UDV members as being ten times higher than that of the non UDV members, did it?

A. A factor of ten, no. I can't address that. But he did demonstrate that people are safer, better concentrated. That he did show. And these are people that have been drinking the tea for more than ten years.

Q. Well, what Dr. Grob said it showed or didn't show is the subject of testimony of other witnesses. All right. Now, since 1998, in other words from 1995 to the present—I withdraw the since 1998. From 1995 to the present, you have told me that there have been nine psychotic episodes, correct? At least nine psychotic episodes that were reported, correct?

A. According to the data that I sent you. Now, we have actually had five cases. I said nine, but I didn't have the data in front of me from the Mental Health Commission, and they turned me in the report on the cases, and there are five.

Q. I am not asking about cases related to the tea. I am asking about total number of psychotic episodes reported, and that is nine, correct?

A. No. From 1996 to now we have had 13 cases [471] of psychiatric disturbances, and five of those 13 would be classed as psychotic disturbances.

THE COURT: Excuse me. Ms. Hollander, can you hear?

MS. HOLLANDER: No. He needs to hold it right up against his mouth.

THE COURT: Go ahead, and let's have the interpreter speak into the same microphone that the witness is using. Let's try that for a while.

Q (By Ms. Hollander) So the information that you gave me, in your deposition and the information in the DEMEC document that is Defendant's UUU are both wrong; is that what you're telling me.

A. No. Okay. Now, when you asked me those questions over the telephone, after that I asked the health people at DEMEC to give me more accurate numbers, the Mental Health Commission. Based on those data that have been translated and turned over to you, it's based on those that I am getting these numbers that I am talking to you now.

Q. I asked you a few moments ago whether it was correct that there was seven episodes of psychosis between 1995 and 1998, as it says here in Defendant's

Exhibit UUU. You said that was accurate. Now you are telling me that there have [472] been five episodes since 1995. I need to know what the numbers are.

A. I'm sorry. I was considering it from '97 to now. Okay?

Q. So is it your testimony today that there have been five episodes total since 1995 of psychosis reported?

A. So from '97 to now it's five.

Q. Oh, all right. I see what you're saying. I apologize. From 1995 to 19—well, here I think it says 1998, there were seven episodes, and since then there have been five. Is that what you're saying?

A. What was that?

Q. This document, Defendant's Exhibit UUU, says that there were seven psychotic episodes or reports of psychosis between 1995 and 1998, and this number five that you're talking about is what has been since then?

A. There could be some intersection of cases there, so—because this presentation at the Brazilian Psychiatry Convention, what that was was a specific approach I did at a given time. And now for organization I am making a separation between the pre-1997 cases and the post-1997 cases, because * * *.

[475] more that nine, I would like to focus on some things that you and I talked about those nine.

A. Okay.

Q. For those nine, that we discussed, the tea was decreased but not suspended, correct, after the psychotic episode?

A. In some cases the person just left. Others underwent psychiatric treatment with specific medication that controlled the episode, and the tea was authorized, but in reduced doses. And some people refused treatment, and in their cases we did not feel at all safe about letting them have any portions of tea.

Q. Well, of the nine that we discussed at the deposition, two left voluntarily and the rest continued to drink reduced quantities of tea, correct?

A. I don't have the exact number here, but some of those people were indeed authorized to take tea, although in smaller portions, and no untoward reactions were observed.

Q. And the mestre was the person who decided what quantity to give them, correct?

A. Yes, based on his experience.

A. And for some of these people, the decrease [476] in the amount was only temporary, correct?

A. Yes.

Q. So, of the nine people that you and I have discussed who suffered psychotic episodes linked to the tea, all are now taking the tea again, except for the two who voluntarily withdrew, correct?

A. What you need to understand is that—what we need to understand is that the psychotic episode is sometimes very transitory, and sometimes people just completely recover from it. And this is different from what we in society refer to as psychosis. And what we have is a situation where we have this transient event, and then they recover with treatment, and after that they are just fine.

Q. You would agree that the existence of a psychotic episode indicates a predisposition or a vulnerability towards psychotic episodes, wouldn't you?

A. Yes.

Q. And you would also agree, I assume, that once you had a psychotic episode, that lowers the threshold to trigger another psychotic episode. Wouldn't you agree with that?

A. That is why we recommend psychiatric monitoring.

* * * * *

[484] shorter sentences?

Q. There is no way to identify all the people with psychiatric vulnerabilities, correct?

A. True.

Q. You have guidelines for the health professionals to determine whether there could be prepsychotic tendencies, correct?

A. There are general guidelines, but there is also the capacity that the mental health professional himself has, and this is a psychiatrist or a psychologist, and when a mental evaluation is needed, so that he puts his background into this.

Q. All right. The orientation, the guidelines you are talking about are the ones at Defendant's Exhibit PPP, correct? These are the orientation guidelines?

A. Yes. We are ready.

Q. I would like you to look at the part which is on the second page that talks about signs of individual predisposition to psychotic crisis.

A. Yes.

Q. The first sign listed here is personal history, right?

A. Yes.

Q. And this states "Previous psychiatric * * *.

* * * * *

[499] research on that.

Q. You don't collect any mental or physical health data on ex-members, do you?

A. No.

Q. And this also is not a primary concern on your part, correct?

A. No.

Q. I have a couple of questions for you about the hoasca project. This project came about as a result of DEMEC inviting Dennis McKenna to a conference in Brazil, correct?

A. I personally challenged Dennis McKenna that way, because at my first conference, all of the works presented were—had Indians as subjects. So I offered him an opportunity to do some research with hoasca tea that was prepared by a mestre of the UDV and individuals who drink the tea in the UDV. So that was what I proposed to him.

Q. Now, in the study, as far as recruiting volunteers, you had the mestres ask for volunteers among their congregations, correct?

A. What we did was we made a general announcement to the four nucleos in the Manaus area.

Q. When you say "we," you're saying the mestres, correct?

[500]

A. Yes.

Q. And one of the criteria for the people ultimately selected for the study was that they be outwardly healthy, correct?

A. Could you repeat that, please?

Q. Yes. One of the criteria for the people ultimately selected for the study, in both groups, was that they be outwardly healthy, correct?

A. Yes, outwardly.

Q. And you screened out people with known health problems, correct?

A. None—just in the course of events, none turned up.

Q. Well, there was someone with diabetes who you decided not to put in the study, for example, correct?

A. Yes, yes.

Q. And as for the controls, the volunteers brought their own, is that accurate? The volunteers picked their controls, correct?

A. Yes. We asked that the volunteers chose from among their relatives, neighbors or co-workers who had never taken the tea before.

Q. Now, the psychiatric team of assessors, as opposed to the clinical team of assessors was not [501] blinded, correct?

A. Well there was no way for the psychiatrist to be double-blind.

Q. And the interpreter was a UDV member at the time, correct?

A. The psychiatric interview that resulted in the psychiatric conclusions, those were conducted by Brazilians, by Brazilian psychiatrists from the university of Sao Paulo. Dr. Grob compiled life stories of those people, and at that point there was a translator used.

Q. And she was a member of the UDV, correct?

A. Yes. At that time she was.

Q. And she was considered a great friend to everyone in the UDV, correct?

A. She didn't know the people from Manaus. She was American.

Q. Well, you have described her as a great friend to everyone in the UDV, haven't you?

A. Yes, but not personally with those people at Manaus. She is a great friend of the people in our other area, and my family, for instance.

Q. And Dr. Nichols was a consultant to the hoasca project, correct?

A. I couldn't very well tell you, because all [502] of those conversations were carried out among the various Americans participating in it, and I am not privy to exactly what all they said. The part that I personally took care of was logistics.

Q. But it's your belief that Dr. Nichols was a consultant to the project, correct?

A. I believe he must have taken some part in the talks, because in the first document his name appears there. The first draft, that is. But afterwards, I don't

know the extent of his total participation. Dr. Charles Grob would know better than I.

Q. And you would agree that there is no way to extrapolate from the findings of this study any conclusions that would be valid or applicable to the population at large, correct?

A. Not from a representative research standpoint, no, but from the standpoint of those 15, yes, there could be.

Q. My question was whether there was any way to extrapolate the findings to the population at large, and I take it your answer is no?

A. I have to agree with you, with the formal way that the question was put.

Q. I should change the subject here. UDV [503] members using hoasca may perceive visual images of objects that may not be perceived by someone not drinking the hoasca, correct?

A. Can we try that again?

Q. I will try. UDV members using hoasca may perceive visual images of objects that would not be perceived by someone not drinking the hoasca, correct?

A. Some people, at some times.

Q. And sometimes this can occur even when their eyes are open, correct?

A. Sometimes that can occur with their eyes open.

Q. When the Brazilian authorities did an investigation into the plants, they didn't look into the question of whether hoasca has adverse health effects, did they?

A. What they investigated was the risk of social damage in the regions where the tea is consumed.

Q. So they didn't look into actual health effects correct?

A. No. That wasn't the purpose by the Federal Narcotics—or Federal Dangerous Drugs Council.

* * * * *

[504]

Q. The focus of your work has been vaccination and tropical diseases, correct?

A. My area of expertise is basically adverse occurrences involved in vaccinations.

Q. And you have never studied any controlled substances other than hoasca, correct?

A. No. That is not my area.

Q. Now, there are some results of the hoasca project that have not yet been published, correct?

A. There is a clinical evaluation part that is due to be studied—that will soon be published in Brazil. We are in the final draft stage right now. The main author of this study is the current president of the Brazilian Council of Medicine.

Q. And one of these clinical results of the study is the electrocardiogram study of long-term hoasca drinkers; is that correct?

A. Yes. They did that as part of that baseline study.

Q. And this study found that there were cardiac irregularities among eight of the 15 hoasca drinkers studied, correct?

A. There were eight alterations that do not correspond to heart disease. Four of these were bradycardia. Michael Jordan has that; Belen, the [505] soccer star. So this is something that young athletes have, this slowness of heartbeat. Some of the participants were very young, they may have been athletes, but this is being looked into.

Q. But you controlled for age among the control group, correct?

A. Yes, but not very precisely. That would depend on each individual's athletic ability. These studies, in any case, are very preliminary and they suggest that what we need to do is do more in-depth studies.

Q. But you did find eight instances of cardiac irregularities among the test group, and one instance among the control group; is that correct?

A. Yes.

Q. And you have not established, I take it, that the test group was overall more athletic than the control group, have you?

A. No. The other changes that we found correspond with very common disease in Brazil, which is considered indemic, and this is shaga's disease. And this could have had something to do with some of the changes in the electrical signals.

* * * * *

Q. But again, you don't have any reason at this point for why this common condition was [506] reflected eight times more often in the test group than in the control group, correct?

A. Well, we can't multiply it by eight because we are talking about two different types of changes here.

If there were eight identical changes, that would be something to worry about, but there were three different types of changes: Bradycardia, ventricular repolarization change, and branch blocking.

So then we've got these three different phenomena, and at that small a group of 15, we can't say how significant that is statistically, and that's why we want to have deeper studies.

Q. The medical scientific department, DEMEC, is responsible for keeping up on all medical and scientific aspects that might pertain to the tea or its components, correct?

A. Yes. We try to.

Q. And you are the head of the medical scientific department, correct?

A. Yes. That is what they call me.

Q. And you said yesterday that you follow the scientific literature in that area, correct?

A. We try to.

Q. But you haven't heard of a study that was * * *.

* * * * *

[559] tended to leave him and come to the UDV. He lost almost all of his followers to the UDV. This is when they realized that they had been had, that they came down the wrong path. So then they seek out the UDV, and we welcome them with open arms.

Q. If somebody outside of any religious context consumes the tea just to enjoy the tea, would you consider that to be a drug, rather than a sacrament?

A. I believe that a person who doesn't have understanding of the virtues of the tea when using it would be making purely speculative use of it. In the UDV, the hoasca is our sacrament. It is our link, our connection to God. It is our Holy Communion.

Q. My question was, outside of the UDV do you still view it as something holy, or would you view it as a drug?

A. In my life I have been punished for not obeying the laws of the UDV. I never drank any tea outside of the context of the UDV. I tried to understand the mistakes that I had made and admit to them. I was forgiven. And now I am the highest authority in the UDV. There is no chance of my drinking the tea outside of the religious context of * * *.

* * * * *

[572]

THE WITNESS: Yes, I did.

THE COURT: From your earlier response, do I understand you at one time were an altar boy?

THE WITNESS: Yes, I was.

THE COURT: How old were you when you left the Roman Catholic Church?

THE WITNESS: When I was—I came to the UDV at the age of 28.

THE COURT: Can you very briefly summarize, please, the core beliefs of the UDV that are the same as those of the Roman Catholic Church and that differ from those of the Roman Catholic church?

THE WITNESS: There is not really a whole lot to explain, because the UDV seeks to follow Christian-

ity in a very respectful manner. What caused me to continue in the UDV and to leave the Catholic Church, I just did not see the teachings that the Catholic Church was imparting to its followers. And I believe that the preacher should be the first one to set the example, and walking the talk, because those who know how to explain should know how to practice what they explain.

THE COURT: Does the UDV hold the same beliefs that are stated in the Nicean Creed?

[573]

THE WITNESS: What is the Nicean Creed?

THE COURT: Did you not recite the Nicean Creed when you were a member of the Roman Catholic Church?

THE WITNESS: Only if it had another name, because I do not know it by that name.

THE INTERPRETER: And the interpreter would like to admit that the interpreter may be pronouncing it wrong.

THE COURT: The creed that the church developed at Nicean, many centuries ago.

THE WITNESS: "I believe in God the all-powerful." Is that it?

THE COURT: Yes. That is the beginning.

THE WITNESS: Yes. As a matter of fact, this day—to this day, I still recite it when I feel the need.

THE COURT: A part of the creed is the belief in the physical Ascencion of Jesus into Heaven. Is that a part of the UDV beliefs?

THE WITNESS: Yes, because nothing is impossible for God, and Jesus is the son of God.

THE COURT: Do you have an understanding of the concept of Mary in theology in the Roman Catholic church?

[574]

THE WITNESS: It would depend on what you mean by that, because I am not at all sure I understand the question.

THE COURT: Let me see if I can ask this in a little more simple way. What is the belief about the UDV regarding Mary, the mother of Jesus?

THE WITNESS: That she is—she is the mother of Jesus, the Virgin Mary of the conception. When I said that was of Mary, and that is because in the Catholic church, the boys are sons of Mary and the girls are daughters of Mary.

THE COURT: And does that belief also—is that also a belief of the UDV?

THE WITNESS: Also.

THE COURT: Which of the liturgical practices of the UDV are the same as those of the Roman Catholic Church, and which are different?

THE WITNESS: I don't believe that there are similarities regarding Catholicism. We simply base ourselves upon Christianity, follow the teachings of Jesus, because this is what Mestre Gabriel taught us. And our rituals are somewhat different. There is a lot

of simplicity in the UDV, whereas there is a lot of sumptuousness in the Catholic church.

[575]

THE COURT: How do the teachings of Mestre Gabriel differ from those of Jesus, and how are they the same? Or is there any different?

THE WITNESS: Well, Mestre Gabriel did not call himself a teacher, a master. He would compose poems to Jesus. He taught us that Jesus was the savior of the world and the son of God, and that his mission was to teach us to recognize Jesus all the more.

Mestre Gabriel was partly illiterate. He only had 23 days of school. In those 23 days, he learned to read and write, and if you could see the poems that he would write to Jesus, you would be baffled.

And with him, I learned to write poetry. I developed the art of poetry, and I use it to worship God, Jesus, and the Virgin Mary, filling my heart with love and harmony, and this fills me with great happiness.

THE COURT: I understood you to testify a while ago that there was a period of time during which the Brazilian national government prohibited the use of hoasca in Brazil; is that correct?

THE WITNESS: That is right.

THE COURT: And I believe you have [576] testified that during that period of prohibition, the UDV did not use hoasca; is that correct?

THE WITNESS: Did not use it, and also did not perform religious ceremonies. The UDV kept up only its administrative meetings to keep the people united,

but there were no sessions. Only administrative meetings.

THE COURT: Okay. Would you please describe how often those administrative meetings occurred during the period of prohibition?

THE WITNESS: Whenever we felt the need. Once a month, and sometimes we could, if we felt a need, do them even twice a month. We would meet at the temples and we would sit and have conversation and engage in our brotherly relationships in order to keep our unity.

And our purpose was to demonstrate to the constituted authorities of our country that we only use the tea as a religious sacrament, but that the tea does not cause any kind of dependence, or is habit-forming.

THE COURT: During the period of prohibition, what was the normal length of an administrative meeting?

THE WITNESS: The duration of the meeting [577] depended on what kind of subjects arose, because the chairman, as a part of each nucleo, has a meeting with other members of the directing body to materially administer the institution. For instance, in this case, where we weren't partaking of the tea, we would meet for maybe two to three hours. We would bring along food to make snacks, and fraternally speaking, we would enjoy our meetings that way.

THE COURT: During UDV meetings where hoasca tea is consumed, is there music and singing?

THE WITNESS: Yes.

THE COURT: During the period of prohibition, was there music and singing during the meetings?

THE WITNESS: No. During the sessions, we make use of music, but these are selected spiritual messages. It's not just any old music that you play during a session. At the meetings, there is no need.

THE COURT: And there was no singing, even of religious songs, during the period of prohibition; is that what you're saying?

THE WITNESS: That is right.

THE COURT: Okay. Let me ask the lawyers. [578] Let's see. Ms. Hollander, you can have a chance to redirect.

MS. HOLLANDER: Your Honor, I only have really one question on the issue of the prohibition, because there was some confusion. If could I direct the Court to page 40 and 41 of our memorandum in support of our Motion for Preliminary Injunction, we do describe there what happened, and the documents from Brazil were attached.

It was actually only one plant, the Banisteriopsis Caapi, which is not the one that contains the natural DMT, that was placed on the prohibited list in June of 1985, and then taken off the list in 1986 provisionally, while they—so they really only were without it for about a year, and then it was '92. But the documents are in the brief.

MS. GOITEIN: Your Honor, I would also, for fullness of the record, call your attention to the portions of Dr. Brito's testimony in which he testified that both plants were put on the list in 1986 and taken off in 1992, for fullness of the record.

MS. HOLLANDER: Your Honor, I think he is wrong about the two plants, or I may be wrong, but

[579] it was officially taken off in '92, but it was provisionally taken off in '86.

THE COURT: Well, are you in agreement as to the period of time during which there were no sessions and only administrative meetings?

MS. GOITEIN: Are we in agreement? I think that is an open question, and you can—

THE COURT: Well, maybe we should ask that of the witness, then.

MS. GOITEIN: When I say it's an open question, it's because I think what I am hearing from this witness is a little different from what I heard from Dr. Brito. That is what I mean.

MR. SZUBIN: I will question him further on that subject.

MS. HOLLANDER: I will try to question him, Your Honor, but he said he didn't know. And if you go back and look, if you look at the documents, it's clear that the final decision of the COFEN was made in 1992, and that is correct.

Nobody asked—he said that, in fact, that they stopped using the tea only for a very short period, and that was the period between '85 and '86 when the tea was suspended. We have the documents. All you have to do is read the [580] documents, and it makes it pretty clear.

THE COURT: Well, Why don't you ask Mr. Olivera what his recollection is—

MS. HOLLANDER: I will ask him, and see if he remembers.

REDIRECT EXAMINATION

BY MS. HOLLANDER:

Q. Do you remember how long the period of time was that you were prohibited from using the tea?

A. It went on for months. I can't tell you exactly how many it was, but it was months. And the government itself lifted the ban afterwards.

Q. Do you—you said months, so it was a period of months? You don't remember how many months?

A. No.

MS. HOLLANDER: I would ask the Court to rely on the documents. If there is any question about their authenticity, we will get the apostolled documents from Brazil.

MS. GOITEIN: Your Honor, I would also just refer you to page 36 of Dr. Brito's deposition, as well.

THE COURT: Page 36 of—

* * * * *

[585]

these documents, I am going to try to avoid asking you the questions that you have been asked before and try to get right to the heart of the issue here. Are you familiar with dimethyltryptamine, commonly known as DMT?

A. I have heard of it.

Q. Are you familiar with the drug schedules?

A. I am.

Q. Is that something that you are familiar with as a result of the work that you do?

A. Yes.

Q. And one thing I wanted to ask you, were you previously employed by the Justice Department?

A. I was.

Q. In what? You're not a lawyer, are you?

A. I am not a lawyer.

Q. In what capacity were you employed by the Department of Justice?

A. I was employed as a policy analyst in the Office of Policy and Management Analysis of the Criminal Division of the Department of Justice from 1979 through 1981. During part of that period I was the associate director of that office for drug control programs and then became acting director, and then director of that office in 1981, with the [586] change of administrations, and stayed there until 1983.

Q. So is it fair to say that drug control is one of the issues that concerns you?

A. It has been my primary professional interest for more than 20 years now.

Q. So what I want to ask you first is, do you know why dimethyltryptamine is a Schedule I controlled drug?

A. Dimethyltryptamine was placed as a Schedule I Congressionally, at the passage of the Controlled Substances Act. There were a list of drugs, I think almost entirely, perhaps entirely, drugs which were already controlled drugs under previous legislative schemes. They were placed on Schedule I.

These were drugs with no accepted medical use, and abuse potential. So, any drug with abuse potential

and no accepted medical use and no accepted safety for use under medical supervision went into Schedule I.

The language in the statute sets out three criteria for Schedule I, inclusion: no accepted medical use, no accepted safety for use under medical supervision, and high abuse potential. But [587] the rest of that statutory scheme setting up Schedules II, III, IV and V, each of those, and other schedules—and those are the only five places that a drug can be under the Controlled Substances Act—it is not controlled, or it's in scheduled I, II, III, IV, or V.

Schedules II, III, IV, and V all specify that the drug have accepted medical use, so that there is no place in the statute for a drug without accepted medical use except in Schedule I. Now, that seems to contradict what the statute says, which is that a drug needs to meet three criteria to meet Schedule I, including high abuse potential.

In practice, that has been worked out simply by reading those provisions disjunctively, rather than conjunctively. Any drug with an established abuse potential and no currently accepted medical use winds up in Schedule I, and that is my understanding of why DMT is there.

Q. So the fact that it's there doesn't necessarily mean that it has a high potential for abuse?

A. No, ma'am.

MS. HOLLANDER: Your Honor, at this time I would like to introduce Plaintiffs' Exhibit 57.

[588]

This is the Federal Register, Volume 66, No. 75, Wednesday, April 18th, 2001. And I have copied the whole thing, just for completeness.

What we really are interested in admitting as an admission, this is a letter from Donnie Marshall, the administrator of the DEA—the DEA is a defendant in this case—dated March 20th, 2001. It's a letter denying a petition by a group that wanted to reschedule marijuana, and the reason we are introducing this is because this issue has come up.

In this letter Donnie Marshall states—tries to explain that marijuana cannot be rescheduled, even if the petitioners are correct that its potential for abuse is lower. And he specifically says—"

MS. GOITEIN: Excuse me. Objection. You're testifying. You have asked to admit the document. I don't have any objection. You can ask the question about the document, but—

THE COURT: Okay. You have no objection to the admission of Exhibit 5?

MS. GOITEIN: I do not have an objection.

THE COURT: Go ahead and ask the question.

Q (By Ms. Hollander) Do you agree with—[589] are you ~~familiar~~ with Donnie Marshall?

A. Yes. Donnie Marshall was the deputy—career deputy administrator, and then administrator of DEA until Mr. Hutchinson came in, which was earlier this year.

Q. And do you agree with what he says in this letter, that even if one were to assume theoretically that the assertions about marijuana's potential for

abuse were correct, i.e., marijuana has some potential for abuse, but less than the quote "high potential for abuse" commensurate with Schedules I and II, "marijuana would not meet the criteria for placement in Schedules III through V because it has no accepted medical use? Is that essentially the same argument that you are making?

A. Yes, ma'am.

Q. Now, assuming for the purposes of this—certainly we are not conceding, but just assuming that the government were to prove to the Court that it has a compelling interest in prohibiting the hoasca outside the sacramental use of the UDV, in your opinion, is there less restrictive means, other than complete prohibition of the UDV's religious practice, to accomplish that goal.

A. Yes, ma'am. There is.

* * * * *

[608]

MS. HOLLANDER: We will resolve it, Your Honor. I mean I just don't want to waste any more time on it. And we may resolve it through a different witness, but before this hearing is over, we will resolve the issue, because it's clearly resolvable.

THE COURT: That's fine.

Q (By Ms. Hollander) Are you aware of the fact that there are Phalaris grasses that grow in this country that contain DMT?

A. Yes, ma'am.

Q. Have you seen on the Internet people discussing how to mix up Phalaris grass to consume it?

A. Yes. I believe there is a book, as well.

Q. A book?

A. Yes.

Q. Now, tell me and tell the Court whether that makes a difference in what you were saying earlier on the issues of diversion if, in fact, this Phalaris grass that contains DMT is present in the United States?

A. The fact that Phalaris contains DMT, is present, and reportedly relatively easily available through non criminal means and that other plants [609] that contain the beta-carbolines are also easily available. And that beta-carbolines are undisputedly not controlled drugs.

Q. What is a plant that contains betacarbolines that you know of?

A. There is one called Syrian Rue, which contains both harmine and harmoline. There are others, and I don't have the names at my fingertips, but Syrian Rue is, I gather, a rather common, ordinary plant.

The fact that someone could grow the grass and the plants and combine them and get an orally-active DMT betacarboline preparation means that if somebody wanted specifically that sort of psychic and physical experience, it wouldn't be necessary to get specifically hoasca.

These mixtures are known as ayhuasca analogs. And it's a question exactly how closely they approach to the precise mixture that might be in one or another batch of hoasca, but there doesn't seem to be any dispute that they contain the same chemicals or the same active chemicals. That potential alternative to diversion would reduce the temptation to divert. It would also reduce the value of preventing diversion in

preventing the [610] abuse, let's say the illegal non-religious use of orally-active DMT.

Q. Have you ever heard of anyone being arrested or seen any statistics of anyone being arrested for possession or use of or growing Phalaris grass in any of its forms?

A. I have not seen any such reports.

Q. Are you familiar with the International Narcotics Control Board?

A. I am.

Q. And what is that?

A. The International Narcotics Control Board is the United Nations agency which is the executive body for the various international drug control conventions, including the psychotropics convention.

Q. Do you know whether the International Narcotics Control Board is required to keep any reports or do any analysis?

A. Yes. Under the treaties, countries that produce, import or export any controlled substance controlled under the international treaties are required to make reports to the INCB. And one of its duties under the treaties is to collate those reports and publish the appropriate statistics.

Q. Are those the kinds of statistics that you [611] would rely on?

A. I would. I am not aware of anyone who has raised questions about the accuracy of the INCB statistics about licit drugs.

Q. About licit drugs?

A. Licit. That's controlled drugs in legitimate commerce.

Q. And do they publish these reports as regular documents?

A. Yes, I believe it's an annual report.

MS. HOLLANDER: It must be late in the day, Your Honor, that I am having so much trouble getting my organization, but I got it here.

Q. I would like to show you some of their reports. Does the INCB have a Website?

A. I believe it does.

Q. Now, when you talk about licit drugs, does this mean the licit drugs that go from country to country?

A. Yes.

Q. And is preventing diversion a concern of the INCB?

A. Yes, it is.

Q. Did you find these Websites?

A. Yes.

[612]

Q. And do you believe that these Websites appear to be their reports?

A. Yes.

Q. Is that under the single Convention that the INCB is required to keep these reports?

A. I believe it's under the SEGO convention and the psychotropics convention.

Q. Does the United States have a representative on the INCB?

A. INCB membership is elected within the UN process. Currently one of the members of the INCB is an American. And I believe, in fact, that what happens is that the country is elected and then designates a representative.

But at least one of the current members of the INCB is an American. But in the most recent election, he was not reelected, so as of a few months from now there will not be a United States member. But the INCB is not made up of representatives of the countries. They are elected members of the board by the UN process.

Q. And the U.S. representative has been Ambassador Okan; is that correct?

A. Yes.

Q. Now, just to explain to you what this is, [613] I haven't attempted to introduced the entire report, which is very voluminous, but just portions of it.

And I would ask you to look at Plaintiffs' Exhibits 50, 51, 52. Those three. 50, 51 and 52, and tell me if these are parts of the report for 1999 that the INCB is required to provide?

A. They certainly appear to be.

MS. HOLLANDER: Your Honor, I would move 50, 51 and 52.

THE COURT: Any objection?

MS. GOITEIN: No, Your Honor.

THE COURT: 50, 51 and 52 are admitted without objection.

(Exhibits 50, 51 and 52 admitted into evidence)

Q. I would ask you to look at these, particularly starting with Number 52.

A. I'm sorry. These aren't marked.

Q. And page 13 of 52.

A. Yes.

Q. I want to ask you if you would agree with this statement that is in this section described as prevention of diversion into illicit channels of narcotic drugs. The first sentence that reads, "Despite the large quantities of substances involved and the large number of transactions, no cases [614] involving the diversion of narcotic drugs from licit international trade into the illicit traffic were detected during 1999."

A. Other than the fact that INCB says it, I wouldn't know that to be true, that there were zero for 1999. I accept their authority on that point. Independently of INCB, I am aware that the number of diversion cases is very small.

Q. Now, do you know what kind of substances they are concerned about?

A. They are concerned about the medically usable controlled substances. And the plants, insofar as they're plant-based, that produce them. So they are interested in poppy and opium and morphine and other derivatives.

They are interested in cocoa leaf and refined cocaine. They are interested in the pure synthetic pharmaceuticals, such as the benzodiazepines, including Valium, the synthetic narcotics, the penthonals, the sedative hypnotics, like Peculon.

So there is full range of things that are, in terms of the U.S. statutory scheme, Schedules II through V, abusable drugs that have medical use and are consequently produced by pharmaceutical [615] companies.

Q. And is this report created, then, from information they have received from both the exporting and the importing countries?

A. Yes. Both sets of countries are required to file reports.

Q. Now, if you will look at page 14, they discuss psychotropic substances. And the first sentence in paragraph 84, Diversion from international trade, reads, "Licit international trade in psychotropic substances in Schedule I of the 1971 Convention has been limited to occasional transactions involving very small quantities of no more than a few grams. No cases involving the diversion of those substances from licit international trade have ever been reported." Do you know what kinds of drugs they are referring to there?

A. A drug such as DMT, that are forbidden for—that they are not a drug for medical use that are controlled drugs, but are still used in research.

Q. So somehow countries have developed, it's reasonable to assume, an anti-diversion program; is that fair to assume from this?

[616]

A. It seems to be a fair inference from the fact that there has never been any diversion that it has been adequately controlled.

Q. Now, to go back for a minute to the medically abusable drugs, is there a problem with the use of those

drugs nationally in the United States? Is there an abuse problem for morphine or cocaine in this country?

A. There is a very large problem, abuse problem, with cocaine. There is not a very large problem of the abuse of morphine, but there is a very large problem of abuse of heroin, which is derived from opium, which is also the parent of morphine.

Q. So what does it tell you if there has been no diversion from licit to illicit medically useful drugs?

A. That despite very strong illicit demand, traffickers in those drugs have found less expensive or less dangerous ways of obtaining supplies for their illicit traffic than stealing from legitimate shipments.

So that heroin, for example, comes into the U.S. not because somebody has stolen poppy straw from an international shipment and refined it into [617] morphine and then into heroin, but because somebody has illicitly grown poppy in, for example, Afghanistan or Colombia, refined it into heroin, and shipped it into the United States as heroin.

So that I think this illustrates the principle that the possibility of diversion depends, in part—or the risk of diversion depends, in part, on the availability of substitute means for people who want to be illicit traffickers to achieve their ends.

If there are easier, cheaper, safer ways to get your illicit drug supplies than stealing them, for example, growing your own, then illicit drug traffickers will do that, even on very strongly in-demand drugs, like heroin.

Q. I would like you to follow up on that, so we have some idea of the quantities we are talking about, look at

Plaintiffs' Exhibit No. 50, and the third page of that is a chart, table eight. Does that tell us some quantities of the amount of cocoa leaf that the United States imports, and where it comes from?

A. Yes, it does. I don't believe it tells us specifically which countries it comes from, other than the countries—there are only two countries [618] here that are listed as licensed to export it.

Q. And I believe that Agent Woodworth said those were the only two from which we received it, Bolivia and Peru?

A. Yes, I believe they are the only two form which anybody can legitimately receive it. It doesn't break down how much we get from each one, but it tells how much we get in total.

Q. Does this mean—oh. If you look at the figure, for example, for '99, that 120,529 kilograms of cocoa leaf arrived in the United States from either/or both Bolivia or Peru?

A. Pardon me. I think you want the next column, the import column. So that would be 110,000.

Q. 110, 738 in 1999?

A. Kilograms.

Q. It says kilograms above there.

A. So 110,000 kilograms, or 110 metric tons of cocoa leaf.

Q. And is some of it coming in as cocoa leaf and some as cocoa paste? Moving over, do you know what the difference is, or why it would come in as leaf or paste? It doesn't look—actually, it doesn't look like the U.S. gets any paste.

[619]

A. The U.S. is not getting any paste. It gets just leaf, according to this, which is consistent with my understanding.

Q. Do you have any idea—

A. I'm sorry. Those tables are not cocaine manufactured, right? So from those 110 metric tons of leaf, we get 165 kilograms of pure cocaine.

Q. Is that a lot of cocaine?

A. It's not a lot of cocaine compared to our illicit consumption. Our illicit consumption is on the order of 300 metric tons. That is 300,000 kilograms per year.

On the other hand, it's a lot of cocaine. 164 kilograms of cocaine would have a wholesale illicit value of—164,000 by 20 is 3-1/2, roughly three and a half million dollars wholesale value, and a retail value of, say, five times that, $15 million. So I mean enough to be worth stealing, but not a large contributor to our illicit supply.

Q. And according to the INCB, it all got in without any problem?

A. Right. According to the INCB, none of it was stolen, even though it was $15 million worth.

Q. If you look at Plaintiffs' Exhibit 51 there is a chart on page 206, I believe it's on 206, [620] and it continues on 208. This is table XIII. It appears to be imports and exports of opium. And am I reading this correctly, that the United States—it says that the second figure is imports—imports 443,041 kilograms of opium from India?

A. That is what it appears to say. I am not familiar—

Q. Does opium come in in kilograms?

A. I would have assume this is in kilograms.

Q. All the other charts come in in kilograms. Would that make sense to you?

A. I would have to know the yield, and I am embarrassed to say I don't remember what the morphine yield from opium is, but—

Q. Is it fair to say that—I think you heard that Terrance Woodworth said that all of the morphine that is used in this country comes in from outside the country?

A. Yes. We don't grow any licit poppy here or any substantial amount of illicit poppy.

Q. So it would have to be enough—can we assume that it would have to be enough to supply every hospital and medical use in the United States for a year?

A. Yes, yes. It's a lot. What we bring in [621] is a lot of opium.

Q. Are there opium derivatives that are abused drugs in this country?

A. Yes. Heroin, most notably.

Q. And as I understand, heroin use is on the rise in this country?

A. I believe that, I believe there is good evidence of that. Not everyone in the field will agree with me, but if you look at the National Household Survey on Drug Abuse, their estimate of heroin incidence as the number

of new heroin users in a given year has more than doubled between the early 1990s and today.

Q. But it's safe to assume, assuming the INCB records are accurate, that none of that came from this huge quantity of poppy straw that the U.S. imports?

A. Correct.

MS. HOLLANDER: Your Honor, do you want me to continue or not? You said you wanted to stop—

THE COURT: Is this a good time to break? I think it's a little after 6:30.

MS. HOLLANDER: It's up to you. I'm happy to go on, but this is the end of this part, and I was going to move to something else.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CV-00-1647 JP/RLP

OCENTRO ESPIRITA BENEFICIENTE UNIAO DO VEGETAL, ET AL., PLAINTIFFS

vs.

JOHN ASHCROFT, ET AL., DEFENDANTS

Motion Hearing
Oct. 25, 2001

BEFORE: THE HONORABLE JAMES A. PARKER
United States District Judge

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[631]

Q. (By Ms. Hollander) You're referring to the American Indian Religious Freedom Act and to the exemption, correct?

A. Correct.

Q. Is it part of what you do to—

MS. HOLLANDER: Let me see if can I lay a foundation.

THE COURT: Why don't I do this? Why don't I just take judicial notice of the provision that you want me to look at?

MS. HOLLANDER: Well, that is kind of where I was going. But I am anticipating the next objection, and now I am just kind of asking if this is the kind of thing that people in the drug policy area would rely upon. But I am about to introduce—and I will just do it now—the Congressional Record in 1965 as Plaintiffs' Exhibit No. 111, and I would ask the Court to take judicial notice of the exemption and the American Indian Religious Freedom Act, so we can proceed.

THE COURT: Any objection to my taking judicial notice of those provisions?

MS. GOITEIN: No objection, Your Honor.

THE COURT: Okay. I will do that at the end.

[632]

MS. HOLLANDER: Thank you. And I would like to move a portion of the Congressional Record, Plaintiffs' Exhibit No. 111, and I will explain that in a moment.

THE COURT: What is that?

MS. HOLLANDER: It is—can I have the witness explain it, rather than—because I am going to ask him questions about it.

THE COURT: Go ahead.

Q. (By Ms. Hollander) Is it part of what you do as a drug policy analyst to review legislative history?

A. Yes, ma'am.

Q. And have you reviewed the legislative history of the Controlled Substances Act?

A. Yes. Not in law professor depth, but adequately, I believe.

Q. Are you familiar with Plaintiffs' Exhibit No. 111?

A. Yes, I am.

Q. What is that?

A. It's the Legislative History of the piece of Controlled Substances legislation. I forget what it was called at the time it was passed in 1965. It's headed here, "To Establish Controls For [633] Depressant and Stimulant Drugs." This is one of the many pieces of legislation that eventually got worked into the framework of 800—21 U.S.C. 800 et. sec.

Q. So a lot of these drug laws, am I correct, actually existed before the Controlled Substances Act?

A. Yes. The Controlled Substances Act was largely a constellation of existing law.

Q. Now, looking at—and does this appear to be part of the Congressional Record?

A. Yes, it does.

Q. Pages 15977 and 15978?

A. That is what it says.

Q. July 8, 1965?

A. Correct.

Q. "Proceedings and Debates of the 89th Congress, First Session"?

A. Correct.

MS. HOLLANDER: Your Honor, I would like to move this into evidence at this time—it's Plaintiffs' Exhibit 111.

THE COURT: What is the government's position?

MS. GOITEIN: No objection, Your Honor.

[634]

THE COURT: Okay. It will be admitted without objection.

MS. HOLLANDER: Thank you.

Q. (By Ms. Hollander) Now, does this contain anything upon which you would rely for the statement that the government permits the use of Schedule I substances?

A. Yes, I would—yes, it does. The question before the House was the passage of the bill establishing controls for depressant and stimulant drugs. And the question had arisen whether this would interfere with the peyote use by the Native American Church. And the position of the government at the time, as expressed by the Food and Drug Administration, was that there was a difference between House and Senate language. The question was whether the restrictive language, potentially restrictive language in the—in the

House-passed version would interfere with the Native American Church. And Mr. Larrick, the Food and Drug Administrator at the time, said—

Q. And you're on the second page of this?

A. On the second page here, page 15978, "If the church is a bona fide religious organization that makes sacramental use of peyote, then it would [635] be our view that H.R. 2, even without the peyote exemption which appeared in the House-passed version, could not forbid bona fide religious use of peyote. We believe that the constitutional guarantee of religious freedom fully safeguards the rights of the organization and its communicants."

MS. GOITEIN: Your Honor, I do object. The part that we are reading from has to do with the legality and the constitutionality of forbidding a drug in a religious context. That is a legal issue that you are addressing in this case. It has nothing to do with the factual issue of the potential contravention of hoasca that this witness is going to testifying about.

THE COURT: Well, the way I will handle this is to consider this with respect to the legal issues as I would any other authority, whether it be a statute or a legislative history of a statute or whatever.

MS. GOITEIN: In that case, Your Honor, I would simply ask that you consider this in conjunction with the multitude of case law that has held the basis for this Act.

THE COURT: I will. I will cycle this

out.

* * * * *

[639] ceremonies was not harmful.

MS. GOITEIN: Objection, Your Honor. That is a mischaracterization and—

MS. HOLLANDER: She can cross-examine him, Your Honor. We are never going to get through this at this rate.

MS. GOITEIN: I am just making my objection for the record.

THE COURT: You can clear it up on cross-examination or bring out what you think the defects are.

A. No one at the time, as far as I am aware, suggested that a finding that use within a particular context was safe would somehow invalidate the Schedule I placement of both peyote and the mescaline contained within it.

Q. (By Ms. Hollander) So for outside religious—other than religious practice, it was still considered unsafe; is that right? Unsafe enough to be a drug of abuse and therefore be scheduled?

A. Well, again, lack of safety isn't a threshold question. The threshold question is whether there is abuse potential. If there is abuse potential and no medical use, in general, the drug [640] goes into Schedule I. What this law did was recognize a legitimate non-medical use of a Schedule I substance, and what the legislative history says is that that use is not harmful. So what I draw from that is a congressional opinion that there are non-harmful uses of Schedule I drugs.

Q. Now, if—and use this as a hypothetical—there is evidence in this case that the membership of the Native American Church is somewhere around 250,000 people, and assume that under the AIRFA, the American Indian Religious Freedom Act, this has now been expanded because that includes any other peyoteous religions, correct—

A. Correct.

Q. —and still, according to Terrance Woodworth's testimony and the testimony of various other DEA agents, there has not been a problem with diversion, what does that tell you as a drug policy analyst?

A. Well, it suggests that allowing religious use of a hallucinogenic drug does not inevitably lead to diversion, that either there is no need for controls because there is not much temptation to divert, or whatever controls have been established have been adequate to prevent diversion. Now, in [641] the case of peyote, it is known that there is an illicit market in peyote, so there is some level of demand and some capacity to supply that demand. Nonetheless, there doesn't seem to be evidence—one can't exclude the possibility, but there doesn't seem to be evidence of diversion from this specific channel that would lead to the hypothesis that the peyote being used illicitly is being harvested illicitly—rather is being harvested illicitly and then diverted.

Q. Or is coming from somewhere other than Texas?

A. Right, harvested illicitly or smuggled into the country.

MS. GOITEIN: I'm going to object to the leading questions which are instructing the witness about the testimony.

THE COURT: Okay. Watch the form of your questions, please.

MS. HOLLANDER: I will, Your Honor.

Q. (By Ms. Hollander) I would like to ask you to look at Plaintiffs' Exhibits 42 and 43, if you will. And let's start with 43. What is that?

A. I believe I recall this from Mr. Woodworth's deposition. This is a summary * * *.

* * * * *

[663] they have 3,000 doses of a hallucinogenic mixture in their hands, they still can't figure out who they are going sell it to. They are not going to know the 3,000 people who want to take a fairly physically difficult hallucinogen trip, and they're probably not going to know anybody who is a dealer. That's just—as far as we can tell from these numbers, they're probably aren't any dealers in illicit ayahuasca.

And so thinking now from the criminal's point of view, I don't think he has found anything of value. And he should probably either call the DEA or toss it back in the sea because there is nothing to do with it. If he tries to sell it, he is going to be selling it to people who aren't interested in its religious use. Then he is competeing in a market where LSD costs $5 a hit, and LSD doesn't make people vomit.

Q. Is LSD readily available as an illicit drug in this country?

A. Unfortunately, it is.

Q. Are you familiar with the College on the Problems of Drug Dependency that goes by the initials CPDD?

A. Yes, ma'am, I am.

[664]

Q. And what is that?

A. It's the oldest and largest scientific organization of people who do drug research. It was originally the Committee on the Problems of Drug Dependency of the National Academy of Sciences, who operated in that context for more than 20 years. And at some point, the National Academy spun it off, or it spun off and became the College on the Problems of Drug Dependency. There is an annual meeting attended by many thousands, at least 7,000 researchers.

Q. And have you learned through the depositions in this case that Dr. Jasinski actually attended the last one?

A. Yes, in June of this year.

Q. Now, what happens at the college?

A. There are many—there are different kinds of sessions. Most of the presentations are made on posters. There is simply a period where people wander around looking at posters that scientists have put up. And the researcher is usually standing next to it, and if you want to ask him a question, you ask him a question.

There are a smaller number of symposia or workshops—I forget what they are called—where [665] a specific room is reserved, there is a limited number of speakers and an audience. And I think there are a tiny number of presentations. And all of these presentations have to be submitted in advance and may or may not be accepted by the organizing committee. If they are accepted, then a poster or a presentation is made and they go into annual publications of the papers

and proceedings of that conference, which is published as Problems of Drug Dependence as part of the National Institute on Drug Abuse Research Monograph Series. So that would be a standard element of any drug research library, would be that set of volumes.

Q. And is that a set that you refer to?

A. Yes. I would certainly cite a paper from that—I mean as a paper.

Q. Now, just for reference—this is not an admitted exhibit, but it is marked as Plaintiffs' Exhibit No. 56, and that is what I am referring to here. Are you familiar with a Dr. C.R. Schuster?

A. Yes, I am.

Q. And who is he?

A. Charles R. Schuster—Bob Schuster—is a Professor of Pharmacology at Wayne State University. He is the either the current or the [666] immediate past president of the College on the Problems of Drug Dependency. He was, in the late 1980s, under the Reagan Administration, was the Director of the National Institute on Drug Abuse. And before that, he was a professor—full professor of pharmacology at the University of Chicago, where his group was famous for doing a variety of drug abuse liability studies.

Q. Is he someone who you cite?

A. I regard him as one of the highest authorities in pharmacology, perhaps second only to Professor Seiden, S-E-I-D-E-N.

Q. And as a part of your profession, do you cite doctors of pharmacology?

A. Oh, yes. Pharmacology is one of the things that I need to know about as a drug policy analyst because I need to know about criminal law.

Q. I would like to ask you, then, if you agree with this statement—and are you aware of the fact that Dr. Schuster was part of the most recent Symposium on Hallucinogens and Reiigion: Historical To Scientific Prospectives?

A. I am aware of that symposium. I was not present.

Q. And that was a symposium, am I correct, at [667] this year's College on the Problems of Drug Dependency?

A. Yes, ma'am.

Q. I want to ask you, then, if you would rely on this statement by Dr. Schuster: "In fact, the limited evidence that exists suggests that the classical hallucinogens are aversive in animals and will serve as negative reinforcers. This is in accord with the observations of humans ingesting drugs such as mescaline, psilocybin or the ayahuasca tea (containing DMT and the beta-carbolines) who frequently show nausea, vomiting, or diarrhea and rarely the type of euphoria associated with drugs of abuse."

Is that something you would rely on?

A. I would rely on that as something that Professor Schuster said, as one of the leading experts in the field. It's also consistent with my prior understanding.

Q. Now, is the abuse potential of a substance part of your analysis in determining whether or not there is likely to be a diversion problem?

A. Yes, it is.

Q. And why is that?

A. The abuse liability of the drug and [668] particularly its reinforcing properties, whether people enjoy using it enough to want to use it again, particularly in the context where, by doing so, they are breaking the law, is an important factor in determining how large an illicit market, if any, a drug will support. And it's also important in determining the risk that an individual who would use the drug once will fall into a pattern of drug abuse that meets clinical criteria for substance abuse or dependence.

The more reinforcing a drug is, the greater the danger that somebody will start to use in a way that he can no longer control, and also the greater the possibility that, having used it once, he will want to tell all his friends about it and encourage them to use it. So there are two different ways reinforcing potential is a large contributor to abuse liability.

Q. Let me ask you about one other individual's paper from the college, and that is someone named Herbert Kleber, K-L-E-B-E-R. Are you familiar with this man?

A. I am.

Q. And who is he?

A. Dr. Herbert Kleber is Professor of [669] Psychiatry and, I believe, Pharmacology at Columbia University. Before he was at Columbia—or at the same time he was at Columbia, he was the—you could say he was the Executive Vice-President of CASA, the Center for Addiction and Substance Abuse, a leading national drug policy organization founded by Joseph Califano, C-

A-L-I-F-A-N-O. That is also affiliated with Columbia University.

Before that, he was the Deputy Director for Demand Reduction Programs, which included research of the Office of National Drug Control Policy—that's ONDCP—appropriate to the Drug Czar's Office. So he was the deputy—one of the four deputies to William Bennett.

And before that, he was Professor of Psychiatry —and again, I believe, Pharmacology—at Yale University, and famous as one of the leading researchers both in drug abuse and drug abuse treatment. The Yale Method of Drug Treatment was, at the time, one of the leading approaches. So he has been quite well known scientifically. His word is taken extremely seriously by everybody in the field. He is also quite conservative both in his general political orientation and specifically with respect to drugs and abuse. His experiences at Yale [670] during the Psychedelic '60s convinced him that the hallucinogens posed a substantial risk, and that led him to be quite conservative in his approach to drug policy issues, generally.

Q. I take it—

THE COURT: Excuse me, Dr. Kleiman.

THE WITNESS: Sorry.

MS. GOITEIN: Your Honor, I am sorry to interrupt. This witness has been on direct for an hour and 40 minutes. We have Professor Dawson here today, who has to testify today. If I am going to have even an hour to cross-examine Dr. Kleiman, which would be 50 minutes less than they have for direct, we are going to have to start very soon on the cross-examination.

MS. HOLLANDER: Well, Your Honor, I have one last question, and I might add that I spent a great deal longer than I intended with this witness because of counsel's repeated requests for him to justify his statements. But I literally have one more question. I would like to finish.

THE COURT: Go ahead and ask it.

MS. GOITEIN: Finish.

MS. HOLLANDER: Thank you.

Q. (By Ms. Hollander) I take it from your [671] description of Dr. Kleber that he is someone you consider reliable?

A. He is. And we are also friends, and from time to time we have a discussion where he calls me and tells me I am wrong about something. And I don't always change my mind, but I always listen very carefully.

Q. Let me ask you if you would agree with this statement that he made at the symposium of the College on the Problems of Drug Dependency. "The key question from a policy point of view is: How should the conflict between the country's compelling need not to interfere with religious practice and the equally compelling need to protect our people, especially the vulnerable young, be resolved? This is a difficult and cloudy issue. However, the current position that permits bonafide members of the Native American Church to use peyote in a controlled communitarian setting may serve as a useful model and could be expanded."

Do you agree with him on that statement?

A. I do. I couldn't have summed it up better. And from the fact that somebody coming from his generally

cautious orientation, if I didn't know anything about this question at all, the fact that [672] Dr. Kleber said, "Yes, this might safely be done," I would find very reassuring.

MS. HOLLANDER: I will pass the witness Your Honor.

THE COURT: Okay. Let me ask for clarification about Plaintiffs' Exhibit 56. We don't show that that was admitted previously, although it was discussed previously.

MS. HOLLANDER: Yes, Your Honor. I didn't admit it because it is—comes under the rubric of a learned treatise under 803-18, and I have just given the Court a copy so he could follow along. I think the rules are that it doesn't get actually admitted, but the statements get read into evidence. So I didn't admit it. I have no objection to its being admitted if the government wishes to have it admitted.

MS. GOITEIN: I do not wish to have it admitted, Your Honor.

THE COURT: Okay. All right. You may proceed with cross-examination.

CROSS-EXAMINATION

BY MS. GOITEIN:

Q. Dr. Kleiman, your career has been largely in academia, correct?

* * * * *

[680] to some extent?

A. Again, it would depend on the demand for the mixture by the organizers—

Q. All right.

A. —plus the demand for the mixture by individuals who intended to use it alone.

Q. Now, the primary reason why you initially said that the demand for the substance would be relatively low is because of the nausea and vomiting and the aversive effects; is that accurate?

A. Because of that and because of the availability of substitutes.

Q. All right. Concentrating on the nausea, you have—you believe that if the nausea and vomiting were not a factor, that there could be some illicit market for ayahuasca, correct?

A. Yes, yes. If these ayahuasca preparations didn't cause any gastrointestinal problems or any other physically unpleasant side effects, then I could imagine that there might be some market for it.

Q. And it's your understanding that half the people or more who drink hoasca in the UDV experience these symptom; is that accurate?

A. Yes.

* * * * *

[696] estimation; isn't that true?

A. Well, but here is the question. Even if, by some happenstance, all 3,000 doses were diverted, and you would ask me as a drug policy expert: Did a big disaster just happen or not, I would say no, not a very big disaster. But if you ask me in advance, "Look, we know this shipment is going to be diverted; should we allow it anyway?" Well, no, of course not.

Q. Now, these 3,000 doses are UDV doses, right?

A. Right. These are the hypothetical 3,000 doses that your colleague asked me about. I have been informed that, in fact, the UDV does not get a year's supply at a time.

Q. But you don't know how much hoasca you would need to ingest to get a psychoactive effect; is that accurate?

A. That is do I know the minimal dose? No, I don't. Though, from the descriptions of Strassman, the dose effect curve is not particularly strange.

Q. Strassman has not done one on ayahuasca?

A. No, studies on DMT. So there is no particular reason to think that doses enormously less than a tenth of the amount that they are taking [697] in the church would, in fact, get people to the level of intoxication that they would be prepared to pay for.

Q. But you don't know that maybe a third of the dose might do the trick?

A. I don't know whether a third of the dose would do the trick.

Q. So that 3,000 doses for the UDV might be 10,000 doses for the diverter; is that a possibility?

A. With respect to my knowledge, it's a possibility. I would be surprised if one asked a pharmacologist.

Q. And that number would obviously increase as the church grew, correct?

A. That is correct.

Q. Now, given the current quantity, you have opined that it would be hard to connect that diverted tea to a market for the tea, correct?

A. I'm sorry. That belief doesn't rest on the small quantity.

Q. Okay.

A. That belief rests on the thinness of the potential market.

Q.All right. So let's forget about it * * * [698] washing up on the shore and your not knowing what it is, because I don't think that that is a useful hypothetical. My question for you would be: Would it be any more difficult for a person diverting some quantity of hoasca to connect to a market than it would be for someone bringing it in from Peru to connect with a market?

A. Again, there are two different possibilities to consider here. One is somebody who already knows where the market is, an organizer of an illicit ceremony or somebody who knows an organizer of an illicit ceremony. All right. That person might then ask: How can I get past—get some stuff that I can sell to this guy? All right. That is one possibility.

The second possibility is somebody who is simply a clerk at a shipping office and sees a shipment go by. He saw a shipment of pharmaceutical cocaine go by, and it occurred him to steal it. Could he, then, without a lot of advance preparation, find somebody to take the cocaine off his hands? He wouldn't have to be—he wouldn't have to have a preconnection to the cocaine market.

In the case of hoasca, a casual thief, just like a casual fisherman who catches your [699] colleague's hypothetical of 3,000 doses washed up on the shore, would have nothing to do with it. Somebody who went out looking for it might be able to use it.

Q. All right. That clarifies something. Thank you. Now you have opined that it's not really necessary for government-imposed controls in order to minimize the risk of diversion in this situation, correct, or in order to minimize it to a negligible level? Is that accurate?

A. Well, certainly the notion is to minimize it to get to the smallest possible level. And so yes, it's almost, by definition, the case that one could put on controls that would reduce it from any given level to some lower level. But I have expressed the opinion that the level, in the absence of any special controls, would be very low.

Q. And that is partly because of the demand, and it's also because you believe that the UDV themselves would be highly vigilant with regard to any diversion of their sacrament; isn't that accurate?

A. It is the case that I believe the UDV would be vigilant with respect to diversion of the sacrament. But the fundamental underlying problem * * *.

* * * * *

[703]

A. Yes.

Q. And this could also be viewed as an incentive not to report thefts and diversion, couldn't it?

A. It could, if the church were prepared to break the law. And also assuming that the church didn't want the assistance of the government in tracking down and punishing people who had stolen its sacrament.

Q. Well, it would be assuming that they wanted that less than they wanted to avoid the additional burden of

the government's attention, correct? As an economist, you would weigh those two things, correct?

A. But you have to weigh more than that. So on the side of reporting, it's that it's legally required, right? So you would have to break the law. Under our hypothetical, you have to break the law not to report it. And in addition, you would essentially have to say, "Well, look. Whoever stole our holy sacrament, we would like them to get away with it and be able to use it sacreligiously rather than having them tracked down and punished," right? That is on the side of reporting it.

On the side of not reporting it, there is, * * *.

* * * * *

[714]

A. No. I was asked whether their statistical reports were accurate. With respect to licit drugs, were these accurate statistical reports of licit drugs, and I said, "Yes."

Q. Would you agree that the control measures of a government is a factor in having reduced the diversion?

A. Presumably, assuming that there was a market for the diverted drug.

Q. And you are aware, I assume, that Brazil does not exercise these control measures when it comes to hoasca being manufactured or exported for religious purposes, aren't you?

A. Yes, I am. There are no current regulations in place.

Q. Now, look at the first sentence of paragraph 87, which is also on page 14. This states, "There are, how-

ever a few important manufacturing and exporting countries that have not implemented such measures, do not yet report exports of all psychotropic substances to the Board or provide reports that are incomplete. Identifying the diversion of psychotropic substances from those countries is difficult." So that's countries that aren't controlling their particular psychotropic * * *.

* * * * *

[722] convention?

A. I am.

Q. And she specifically asked you about implementation by the government of the control measures for substances in Schedule II as foreseen by the 1991 convention, and in Schedule I, correct?

A. Correct.

Q. Do you know who Herbert Schaepe is?

A. I'm sorry, I don't.

Q. Herbert Schaepe, the Secretary of the Board, the International Narcotics Board?

A. I'm sorry. I am familiar with the office. I didn't know the name of the holder.

Q I would like to show you a letter, Plaintiffs' Exhibit No. 54, and ask you if you have ever seen that letter before.

A. I have seen it.

Q. Do you know whether the International Narcotics Control Board, as part of their official duties, answers questions from governments regarding which substances are or are not within their purview?

A. I am aware that the International Narcotics Control Board is charged by the treaties with supervising the compliance by member [723] governments, with the treaties, presumably then answering the question about what the treaty required as part of their job.

Q. And would you consider that if the Secretary of the International Narcotics Control Board had an opinion about whether a particular substance was or was not controlled, would you rely on that opinion?

A. I would take that very seriously.

MS. GOITEIN: Objection, Your Honor. We are now introducing testimony about whether or not ayahuasca is controlled under the International Convention. That is not one of the issues in this hearing.

MS. HOLLANDER: Your Honor, I think she just made it an issue by referring to the International Narcotics Board and which substances they control and which substances they don't control.

MS. GOITEIN: Your Honor, the person who introduced that exhibit was plaintiffs' counsel, who introduced it for the purpose of talking about the effectiveness of controls. I also was talking about the effectiveness of Schedule I and II controls. I did not talk about the applicability of the treaty [724] to ayahuasca. That is not one of the issues here. That is a legal issue, and that is up to Your Honor to decide. But this is a sneaky—

THE COURT: How would testimony of this nature assist me in deciding what I need to decide?

MS. HOLLANDER: Well, Your Honor, I think it would assist you because, in fact, as the government

knows, the International Narcotics Board does not control ayahuasca, does not consider it controlled, and that is something that the government witness has seen. The government witness, Mr. Woodworth, has seen this letter.

We would not have brought this up had the government not gone through and asked questions specifically about which substances the INCB controls. And if the government is going to do that, the government is literally, once again, trying to keep evidence from this Court. They know that they have this letter.

MS. GOITEIN: Your Honor, we did not just now talk about which substances were controlled in the convention. When I went through this report, it was to rebut the statements Ms. Hollander made from the report yesterday about the effectiveness of the controls. That is the only reason.

[725]

The reason why we should not be talking about this today is because it is not an opinion of the INCB. The secretary of the board is not a voting member. The government does not agree or accept that the INCB doesn't control ayahuasca under the convention. The INCB does not have the authority to determine what is controlled under the convention. This is an entirely separate issue. It's a legal issue for another day. And this does not relate to diversion or anything I talked about just now.

MS. HOLLANDER: I think it relates—

THE COURT: Well, I am still not sure how I would use whatever he might testify to on this point in deciding the issues confronting me now.

MS. HOLLANDER: Well, the issue, Your Honor, is that the Secretary of the Board of the INCB, who is the person who responds to questions of what the international treaties control, is certainly relevant to determining what the issues involved in export and import from Brazil.

MS. GOITEIN: Your Honor, the Secretary of the INCB is not the person who responds to inquiries about what is controlled under the treaties. This is a letter. It's not a published opinion. It's [726] hearsay. It's not—it's hearsay, it's not admissible to be testified about, and it's not the subject of this report. And whether or not ayahuasca is controlled under the treaty has nothing to do with the effectiveness of the controls, which is the only thing that I was asking about. And this is a back-door attempt to get in something about the applicability of the treaty. It's totally inappropriate.

THE COURT: What is the significance of whether the treaty does or does not apply?

MS. HOLLANDER: I think the significance is, Your Honor, that, first of all, Mr. Woodworth will testify about his obligations and the United States' obligations under the treaty. And it certainly goes, as she says, to a much broader issue of whether the United States has a compelling interest. And we have—

MS. GOITEIN: It is not—

MS. HOLLANDER: And we have raised it for that point, but—

THE COURT: All right. So it's a compelling interest issue; is that what the answer is finally?

MS. GOITEIN: It is certainly a compelling [727] interest issue. It is not one of the issues for this hearing. We raised the issue of whether there is a compelling interest in violating the treaty. But not only is that not one of the issues you asked for, it is not something that Mr. Woodworth testified about.

He testified at his deposition over my objection when Ms. Hollander asked him about it. If you look at his report, it does not mention whether ayahuasca is covered under the treaty, because that was not the subject of this hearing. It's a legal question. It's one of the compelling interests that you did not ask to hear evidence about.

MS. HOLLANDER: Well, I don't want to get into an argument about it with counsel or the Court, except that when Mr. Woodworth was asked to put together—when I asked him a hypothetical: Could you come up with a diversion program? His first response was: I would argue against that because it would violate our obligations under the treaty.

Now, I can wait and withdraw this at this time and bring it up with Mr. Woodworth, if you would prefer, Your Honor, rather than get into it right now.

THE COURT: Why don't we defer it and see * * *.

* * * * *

[772]

A. Yes.

Q. Now, would you agree with me that different religions have very different beliefs?

A. Yes.

Q. And different rituals?

A. Yes.

Q. And different references to the transcendent?

A. Yes.

Q. But they generally all have some reference to the transcendent?

A. I believe so, yes.

Q. And it's true, is it not, that hundreds of different religions and societies have incorporated a drug or hallucinogen of some form into their religious ceremonies?

A. Yes.

Q. And it's also true, is it not, that psychoactive plants having hallucinogenic effects have been valued for thousands of years in many cultures?

A. Yes, though I can't claim any expertise on that. That is my impression, yes.

Q. And they have been valued for their ability to facilitate spiritual, mystical and [773] transcendent experiences?

A. Yes.

Q. Now, I assume you are familiar with the King James Bible?

A. Uh-huh.

Q. Are you familiar with that?

A. Yes.

Q. It's one of those things that you have to read in your—

A. Well, actually, in my case, I didn't.

Q. You have never read it?

A. My area is sociology of religion. My other area of expertise in terms of—in my Ph.D., we were required to have to other areas. My other area is parallel to Buddhism, so the text I read was the Polycanon. And particularly, we gave them a title. So I'm much more of an expert on Buddhism than of any other religion.

Q. You will agree, however, that major religions in the world do read the Bible, correct?

A. Sure. Yes.

Q. And rely on the words that it says?

A. Well, rely, yes, depending on what you mean by "rely." In a general sense, yes.

Q. Are you familiar—let me read you a [774] quote, then, from Chapter 2, Verse 28, the Book of Joel in the Old Testament:

"And it will come to pass afterwards that I will pour out my spirit upon all flesh and your sons and your daughters shall prophesy, your old men shall dream dreams, your young men shall see visions."

A. Right.

Q. You're familiar with that, aren't you?

A. I think I have heard it, yes.

Q. And that is in a book that numerous Christian religions rely on and others also, correct?

A. Yes. And those kinds of statements would be central to the charismatic and pentecostal movement.

Q. And actually have been central to other religious movements throughout history, according to what you have said before, right?

A. Yes.

Q. Now, you have never—have you ever before been asked to critique a psychiatric or medical study?

A. No.

Q. So this is the first time?

* * * * *

[778] study that you have critiqued were conducted by a psychiatrist, correct?

A. Yes.

Q. And by the way, you are of the opinion that this study has unquestionably done important work on the use of hoasca by the Brazilian religious group, correct?

A. Correct.

Q. Now, psychiatrists are trained to interview people, are they not?

A. They are trained to interview people in a clinical setting.

Q. And psychiatrists conducting an interview might have different interests than a sociologist conducting an interview; isn't that correct?

A. They could have different interests, sure.

Q. And they might be interested in the feelings that the person chose when the person is answering the questions, for example, correct?

A. Well, sociologists would have that interest, as well.

Q. Have that interest as well. But part of the purpose of a psychiatric life-study story by a psychiatrist

would be different than a sociological interview, wouldn't it?

* * * * *